

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT,
1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D16-0222
L.T. No.:2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant / Petitioner,

**Appellant's Motion To Supplement
Record on Appeal**

v.

TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellee / Respondent(s)

Appellant-Petitioner Eliot I. Bernstein, respectfully says and moves this Court as follows:

1. I am the Appellant-Petitioner herein pro se.
2. I make this motion to Supplement the Record on Appeal under Florida Rules of Appellate Procedure 9.200 and 9.220 to provide Transcripts of Hearings not included in the Record on Appeal prepared and filed by the Palm Beach County Clerk.
3. The Transcripts and Records provided are necessary to provide an understanding to the Court of the issues to be presented on Appeal.

4. The lack of full and complete records and filings from the 4 cases including the existence of “filed” items that were never served upon me and the “cross-over” confusing nature of the Dockets where items of one Case Number then appear in others even with Transcripts has caused delay with a substantial time sorting out the information and said motion is filed in good faith. Also, the court recently changed its entire docketing system and changed various of the docket numbers in the cases and this made checking records especially time consuming.
5. Attached as Exhibit 1 is a list of the Transcripts and the corresponding Transcripts for each case and provided to be supplemented to the Record on Appeal if there are any other requirements to make the transcripts part of the record on appeal please let me know.
6. There are missing transcripts for hearings and I am uncertain if attorneys involved in the case or those that have been removed maintain these records and would move to have all transcripts inserted into the record, as due to the fraud on the court discovered and proven already and fraud by the court alleged, these transcripts provide invaluable records for this Court’s review and I have not been provided all transcripts or even the service that was used for them.

WHEREFORE, it is respectfully prayed for an Order supplementing the Record on Appeal as provided herein and for such other and further relief as to this Court may be just and proper.

Dated: June 20, 2016

/s/Eliot Ivan Bernstein

Eliot Ivan Bernstein

2753 NW 34th St

Boca Raton, FL 33434

561-245-8588

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 20th day of June, 2016.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

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**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS,
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EXHIBIT 1 - SUPPLEMENTAL RECORDS – TRANSCRIPTS

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
1	Shirley Estate	9/13/2013	Yes	Jessica Thibault/Spallina Tescher	Emergency Motion to Freeze Estates...	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf	
2	Shirley Estate	10/28/2013	Yes	Michael Todd Berkowitz	Evidentiary Hearing - Moran Fraudulent Docs	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf	
3	Shirley Estate	11/19/2013	No	/Brandan Pratt	Motion to Withdraw As Counsel filed by Huth & Pratt, counsel for Eliot Bernstein,	No Transcript - Brandan Pratt Ordered Hearing	No Transcript - Brandan Pratt Ordered Hearing	Order is not signed or dated in hand but stamped and not sure if there was hearing???
4	Shirley Estate	1/2/2014	Yes	Erica Field, EMPIRE (954) 241-1010/Manceri for Tescher Spallina	Motion to Consolidate	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140102%20Colin%20Hearing%20to%20Consolidate%20Cases%20with%20Colin%20Hearing%20Frenchs%20hearing%20in%20violation%20of%20Statute.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140102%20Colin%20Hearing%20to%20Consolidate%20Cases%20with%20Colin%20Hearing%20Frenchs%20hearing%20in%20violation%20of%20Statute.pdf	Manceri claims in hearing that Colin called his office and had him schedule this
5	Shirley Estate	1/2/2014	No	Erica Field, EMPIRE (954) 241-1010/Manceri for Tescher Spallina	Motion to Consolidate	No Transcript but transcribed	No Transcript but transcribed	
6	Shirley Estate	1/23/2014	No	/Manceri for Tescher Spallina	MOTION TO WITHDRAW AS COUNSEL OF RECORD for Ted Bernstein, 01/23/14 AT 8:45 A.M. F/B: MARK R MANCERI E-FILED	No Transcript - Manceri Tescher Spallina Ordered Hearing	No Transcript - Manceri Tescher Spallina Ordered Hearing	
7	Shirley Estate	2/18/2014	Yes	Lorraine Wofford - Pleasonton/Spallina	PETITION FOR RESIGNATION AND DISCHARGE (copy attached) FILED BY: Robert L. Spallina, Esq.	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20Hearing%20Bernstein%20-%202018%2014%20hearing%20transcript.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20Hearing%20Bernstein%20-%202018%2014%20hearing%20transcript.pdf	Appears in Shirley Docket But Transcript Under Simon Estate Hearing not Shirley Estate. Docket #90
8	Shirley Estate	2/19/2014	Yes	David Marsaa/Pleasanton	Continued hearing from 2/18	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140219%20Hearing%20Bernstein%20-%202019%2014%20hearing%20transcript.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140219%20Hearing%20Bernstein%20-%202019%2014%20hearing%20transcript.pdf	
9	Shirley Estate	6/12/2014	Yes	David Marsaa - Pleasanton/Rose	Hearing re TED MOTION INSTRUCTIONS. MOTION COMPEL ELIOT COMPLY DISCOVERY REQUESTS, RULE 1.285//Curator 2nd Petition for Payment of Curator's Fees/Morrissey Hearing at Judge Colin's Request TED S. BERNSTEIN'S MOTION TO COMPEL Hearing re TED MOTION INSTRUCTIONS. MOTION COMPEL ELIOT COMPLY DISCOVERY REQUESTS, RULE 1.285//Curator 2nd Petition for Payment of Curator's Fees/Morrissey Hearing at Judge Colin's Request TED S. BERNSTEIN'S MOTION TO COMPEL	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140612%20Hearing%20Transcript%20Colin%20Simon%20Estate.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140612%20Hearing%20Transcript%20Colin%20Simon%20Estate.pdf	
10	Shirley Estate	6/12/2014	Yes	/Morrissey		Yes but in Simon Bernstein case	Yes but in Simon Bernstein case	Appears in Shirley Docket But Transcript Under Simon Estate Hearing not Shirley Estate. Docket #98
11	Shirley Estate	6/19/2014	Yes	/Rose, Ted Bernstein	JUDGE: Honorable Martin Colin MATTER TO BE HEARD: TED S. BERNSTEIN's OMNIBUS MOTION INCLUDING TO CONTINUE JULY 11TH HEARING AND SET STATUS CONFERENCE FOR JULY 11TH AND FOR OTHER RELIEF	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140619%20TRANSCRIPT%20-%20HEARING%20-%2006-19-14.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140619%20TRANSCRIPT%20-%20HEARING%20-%2006-19-14.pdf	

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
12	Shirley Trust	9/3/2014	No	/Rose, Ted Bernstein	NOTICE OF HEARING on Alan Rose Construction of Trust to fix past Fraudulent Conversions and change bene's of irrevocable trust	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
13	Shirley Trust	9/15/2014	Yes	/Rose, Ted Bernstein	MATTER TO BE HEARD: TED S. BERNSTEIN'S MOTION TO SEVER AND STAY COUNTERCLAIM PENDING RESOLUTION OF TRUST CONSTRUCTION COUNTS / Eliot Contempt	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140915%20TRANSCRIPT%20-%20HEARING%20-%209-15-14%20-%20Mot%20Hold%20Eliot%20in%20Contempt%20&%20Others.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140915%20TRANSCRIPT%20-%20HEARING%20-%209-15-14%20-%20Mot%20Hold%20Eliot%20in%20Contempt%20&%20Others.pdf	
14	Shirley Estate	11/14/2014	No	/Rose, Ted Bernstein	ESTATE OF SHIRLEY BERNSTEIN - TED S. BERNSTEIN'S PETITION TO RE-CLOSE ESTATE BASED UPON PRIOR SIGNED WAIVERS AND FOR DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
15	Shirley Trust	12/3/2014	No	/Rose, Ted Bernstein	PLAINTIFF'S MOTION FOR DEFAULT WITH NOTICE AGAINST PAM SIMON; LISA FRIEDSTEIN INDIVIDUALLY AND AS TRUSTEE; MAX FRIEDSTEIN; AND JILL IANTONI, INDIVIDUALLY AND AS TRUSTEE -and- TED S. BERNSTEIN'S MOTION TO SET TRIAL ON COUNT II OF AMENDED COMPLAINT	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
16	Shirley Trust	1/13/2015	No	/Rose, Ted Bernstein	SHIRLEY TRUST TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO STRIKE AND MOTION TO STAY PROCEEDINGS	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
17	Shirley Trust	1/27/2015	No	/Rose, Ted Bernstein	TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO STRIKE AND MOTION TO STAY PROCEEDINGS	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
18	Shirley Trust	3/25/2015	No	/Rose, Ted Bernstein	HEARING COLIN - NOT SET WITH PROPER NOTICE - MOTION TO APPROVE TRUST PROPERTY AND FOR ORDER PROHIBITING INTERFERENCE WITH CLOSING, INCLUDING DISCHARGING LIS PENDENS CERTIFICATE OF SERVICE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
19	Shirley Trust	3/26/2015	Yes	April Segui US Legal Support/Rose, Ted Bernstein	SPECIAL HEARING - MATTER(S) TO BE HEARD: EVIDENTIARY HEARING ON MOTION TO APPROVE SALE OF TRUST PROPERTY AND FOR ORDER PROHIBITING INTERFERENCE WITH CLOSING, INCLUDING DISCHARGING LIS PENDENS	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150326%20HEARING%20TRANSCRIPT%20HOME%20SALE.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150326%20HEARING%20TRANSCRIPT%20HOME%20SALE.pdf	
20	Shirley Trust	4/23/2015	No	/Rose, Ted Bernstein	IMOTION TO DISMISS ELIOT BERNSTEIN'S PETITION REMOVE TED BERNSTEIN, AS SUCCESSOR TRUSTEE OF SIMON L. BERNSTEIN AMENDED & RESTATED TRUST / MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT & FOR SANCTIONS / MOTION TO STOP SALE OF 7020 LIONS	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	Note Simon Matter being heard in Shirley. Audio says April 22

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
21	Shirley Trust	4/23/2015	No	/Rose, Ted Bernstein	2nd part MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
22	Shirley Trust	5/6/2015	No	/Rose, Ted Bernstein	MATTER(S) TO BE HEARD: CONTINUED EVIDENTIARY HEARING ON TRUSTEE'S MOTION TO APPROVE SALE OF TRUST ASSET EVIDENTIARY HEARING ON ELIOT BERNSTEIN'S MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY EVIDENTIARY HEARING ON TRUSTEE'S SUPPLEMENT TO MOTION TO APPROVE SALE OF TRUST PROPERTY RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S HOMESTEAD	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
23	Shirley Trust	5/6/2015	No	/Rose, Ted Bernstein	COURT HEARING for evidence of market value and title company to appear in Shirley Trust case	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
24	Shirley Estate	6/4/2015	Yes	/O'Connell	PETITION FOR AUTHORIZATION TO MOVE, STORE, AND SELL THE TANGIBLE PERSONAL PROPERTY LOCATED AT 7020 LIONS HEAD LANE PETITION FOR INSTRUCTIONS TO DETERMINE WHETHER THE ESTATE SHOULD MAKE A LOAN TO ELIOT BERNSTEIN AND FOR OTHER RELIEF PETITION FOR INSTRUCTIONS AND REVIEW OF COMPENSATION OF ACCOUNTANTS' FEES & COSTS PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR NOVEMBER THROUGH DECEMBER 2014 PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR JANUARY 1, 2015 THROUGH MARCH 23, 2015	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150604%20Hearing%20Transcript%20COATES%20Estate%20of%20Simon%20Bernstein.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150604%20Hearing%20Transcript%20COATES%20Estate%20of%20Simon%20Bernstein.pdf	Scheduled in Simon but Shirley also ruled on. Judge Coates 1st hearing
25	Shirley Trust	12/15/2015	Yes	Transscript Shirley King US Legal Support /Rose, Ted Bernstein	ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II This matter came before the court on its own motion, for resolution of outstanding issues as required by the October 6, 2014, Order of the Honorable Martin H Colin, the Circuit Court Judge formerly assigned to this case. In that Order, Judge Colin severed trial of Count II of the Plaintiff's Amended Complaint from remaining claims in the action, and stayed all further proceedings in the action pending further Order of the Court. Accordingly, the Court ORDERS as follows: 1. Trial of the issues set forth in Judge Colin's October 6, 2014, Order on Amendments to Pleadings and Stay until Further Order of Court (DE 27) and Count II of Plaintiff's Amended Complaint (DE 26) shall take place on December 15, 2015 @ 9:30AM ; 1 (one) day has been set aside for trial. 2. The Petitioner and the Respondent have an obligation to make a good faith effort to resolve this case. Towards that end, the parties are ordered to attend a pre-trial mediation that must take place no later than ten (10) days before the first day of trial of this case. Failure to attend pretrial mediation absent an order waiving same may result in the striking of the case from the	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf	

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
26	Shirley Trust	1/14/2016	No	/Rose, Ted Bernstein	HEARING IMPROPERLY SCHEDULED WITHOUT NOTICE - SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS CERTIFI	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
27	Shirley Trust	2/4/2016	No	/Rose, Ted Bernstein	MATTER(S) TO BE HEARD: TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF CERTIFICATE OF COMPLIANCE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	Court Callin with Phillips, Standing Issue
28	Shirley Trust	2/25/2016	No	/Rose, Ted Bernstein	MATTER(S) TO BE HEARD: SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS CERTIFICATE OF SERVICE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	
29	Shirley Trust	3/28/2016	No	/Rose, Ted Bernstein	EVIDENTIARY HEARING - TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF CERTIFICATE OF SERVICE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	Did not attend no standing
30	Shirley Trust	4/8/2016	No	/Rose, Ted Bernstein	TRUSTEE'S AMENDED MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF AND FOR ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT + TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	Did not attend no standing
31	Shirley Trust	4/8/2016	No	/Rose, Ted Bernstein	SUCCESSOR TRUSTEE'S AMENDED MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN CERTIFICATE OF SERVICE	No Transcript - Rose, Ted Bernstein Order Hearing	No Transcript - Rose, Ted Bernstein Order Hearing	Did not attend no standing
32	Simon Estate	11/12/2013	NO	/Feaman	Stansbury Hearing regarding objection to production of Lewin	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
33	Simon Estate	11/21/2013	NO	/Feaman	Stansbury Hearing Extension of Time	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
34	Simon Estate	12/11/2013	NO	/Feaman	Stansbury Motion to Intervene Hearing	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
35	Simon Estate	1/14/2014	NO	/Manceri	Motion to Transfer and Consolidate	No Transcript - Manceri Order Hearing	No Transcript - Manceri Order Hearing	Judge French - Cancels hearing on 12/24/13
36	Simon Estate	1/23/2014	NO	/Manceri	MOTION TO WITHDRAW AS COUNSEL OF RECORD for Ted Bernstein, 01/23/14 AT 8:45 A.M. F/B: MARK R MANCERI E-FILED	No Transcript - Manceri Order Hearing	No Transcript - Manceri Order Hearing	
37	Stansbury Lawsuit	1/28/2014	NO	/Feaman	WEST PALM BEACH - HEARING MOTION TO WITHDRAWWITHDRAW AS COUNSEL OF RECORD F/B/ATTY MARK MANCERI FROM STANSBURY LAWSUIT Case #50 2012 CA 013933 MB AA or 502012CA013933XXXMB	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
38	Simon Estate	2/18/2014	YES	/Spallina	MOTION/MATTER: PETITION FOR RESIGNATION AND DISCHARGE (copy attached) FILED BY: Robert L. Spallina, Esq.	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20Hearing%20Bernstein%20-%202018%2014%20hearing%20transcript.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20Hearing%20Bernstein%20-%202018%2014%20hearing%20transcript.pdf	
39	Simon Estate	2/19/2014	YES	/Spallina	Hearing Colin Continuation of 2/18/14 hearing - Simon Estate - Shirley Estate	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140219%20Hearing%20Bernstein%20-%202019%2014%20hearing%20transcript%20(2).pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140219%20Hearing%20Bernstein%20-%202019%2014%20hearing%20transcript%20(2).pdf	

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
40	Simon Estate	5/23/2014	YES	/Brown	Colin; Curator's Motion for Instructions Regarding 2012 Will; Curator's Motion for Instructions Regarding May 1, 2014(1) Curator's Motion for Instruction/Determination Regarding Estate Entitlement to Life Insurance(2) Petition for Appointment of Administra	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140523%20Hearing%20Transcript%20Estate%20of%20Simon%20Bernstein.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140523%20Hearing%20Transcript%20Estate%20of%20Simon%20Bernstein.pdf	
41	Simon Estate	6/19/2014	Yes	LISA GREENWELL, Court Reporter PLEASANTON, GREENHILL, MEEK & MARSAA 561/833.7811/Brown	One is a Motion For Instructions Regarding Authority to Liquidate an IRA and To do an inventory to make sure they're there at the residence	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140619%20TRANSCRIPT%20-%20HEARING%20-%206-19-14.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140619%20TRANSCRIPT%20-%20HEARING%20-%206-19-14.pdf	
42	Simon Estate	6/24/2014	NO	/Brown	The Honorable Martin Colin - Curator's Motion for Instructions Regarding Authority to Retain Counsel filed by Curator	No Transcript - Benjamin Brown Order Hearing	No Transcript - Benjamin Brown Order Hearing	
43	Simon Estate	8/19/2014	Yes	Part 1 Lisa Mudrick, RPR, FPR @ Mudrick Court Reporting, Inc.(561) Part 2 615-8181/Feaman and Everman & Everman, Inc. 1101 N Olive Ave West Palm Beach Fl 33401	Motion to Special Set Petition to Remove Successor Trustee, Ted Bernstein	Part 1 http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140819%20TRANSCRIPT%20-%20HEARING%20-%208-19-14%20-%20full%20hearing.pdf and http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140819%20TRANSCRIPT%20HEARING%20Part%202%20Part%201%20missing.pdf	Part 1 http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140819%20TRANSCRIPT%20-%20HEARING%20-%208-19-14%20-%20full%20hearing.pdf and http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140819%20TRANSCRIPT%20HEARING%20Part%202%20Part%201%20missing.pdf	
44	Simon Estate	9/18/2014	No	/Brown	Matters: 1. Curator's Petition for Approval of Accounting and for Discharge; 2. Third Petition for Payment of Curator's Fee; 3. Fourth Petition for Payment of Curator's Fee; and 4. Fifth Petition for Payment of Curator's Fee. And NOTICE OF SPECIAL SET HEARING - Curator's Petition for Approval of Accounting and for Discharge	No Transcript - Benjamin Brown Order Hearing	No Transcript - Benjamin Brown Order Hearing	

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
45	Simon Estate	9/24/2014	No	Court Reporter = US Legal Support – Susan Shelling 835-0220 sueshelling@aol.com /Eliot	" PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SIMON BERNSTEIN REVOCABLE TRUST and subpart exhibits as they relate to removing Ted Bernstein: and (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER A TT ACHED EFILED and STANSBURY, WILLIAM E PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST and RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUSTAGREEMENT and JOINDER IN PETITION FILED BY ELIOT IV AN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING FIB WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED and	No Transcript but transcribed by US Legal	No Transcript but transcribed by US Legal	
46	Simon Estate	10/30/2014	No	/Glaskow	IN RE: EST ATE OF SIMON L. BERNSTEIN - Motion to Withdraw - Glaskow Attorney for Jill and Lisa	No Transcript - Glaskow Order Hearing	No Transcript - Glaskow Order Hearing	
47	Simon Estate	10/30/2014	No	/Feaman	Creditor, William E. Stansbury's Motion for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
48	Simon Estate	12/18/2014	NO	/Feaman	HEARING Motion of Creditor, William E. Stansbury, for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
49	Simon Estate	12/23/2014	NO	/O'Connell	IN RE: ESTATE OF: PROBATE DIVISION STATUS CONFERENCE ON PROPOSED FILING OF SUCCESSOR PERSONAL REPRESENTATIVE'S MOTION FOR AUTHORIZATION TO ENTER INTO AND APPROVAL OF SETTLEMENT AGREEMENT	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	
50	Simon Estate	1/5/2015	NO	/O'Connell	HEARING - STATUS CONFERENCE ON PROPOSED FILING OF SUCCESSOR PERSONAL REPRESENTATIVE'S MOTION TO INTERVENE	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	
51	Simon Estate	1/8/2015	YES	/Feaman	Motion of Creditor, William E. Stansbury, for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150108%20TRANSCRIPT%20-%20HEARING%20-%201-8-15%20-%20Mot%20Instructions%20re-%20Mortgage.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150108%20TRANSCRIPT%20-%20HEARING%20-%201-8-15%20-%20Mot%20Instructions%20re-%20Mortgage.pdf	

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
52	Simon Trust	1/8/2015	YES	/Rose, Ted Bernstein	TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON L. BERNSTEIN TRUST, MOTION FOR INSTRUCTIONS	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150108%20TRANSCRIPT%20-%20HEARING%20-%201-8-15%20-%20Mot%20Instructions%20re-%20Mortgage.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150108%20TRANSCRIPT%20-%20HEARING%20-%201-8-15%20-%20Mot%20Instructions%20re-%20Mortgage.pdf	
53	Simon Estate	1/13/2015	NO	/Eliot	Statement of Claims Eliot and Brian O'Connell	No Transcript - Eliot Order Hearing	No Transcript - Eliot Order Hearing	
54	Simon Estate	1/27/2015	NO	Steno Beth Kelly @ Pleasanton Greenhill Meek and Marsaa/Feamn	MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR ASSUMPTION OF RESPONSIBILITY BY THE ESTATE SUCC	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	
55	Simon Estate	1/29/2015	NO	/O'Connell	HEARING 502012CP4391XXXXSB Simon Estate - STATUS CONFERENCE ON MOTION TO CONTINUE SPECIALLY SET HEARING ON FEBRUARY 9, 2015	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	
56	Simon Trust	2/10/2015	NO	/Eliot	HEARING JUDGE KEYSER - MOTION TO MOVE CASE TO HONORABLE JUDGE MARTIN COLIN – AGREED ORDER	NO	NO	502014CA014637XXXXM B Judge Keyser
57	Simon Estate	2/26/2015	NO	/Brown	Petition for Discharge of Administrator Ad Litem	No Transcript - Benjamin Brown Order Hearing	No Transcript - Benjamin Brown Order Hearing	
58	Simon Estate	3/18/2015	NO	/Brown	SIMON ESTATE BEN BROWN MOTION Amended Petition for Discharge of Administrator Ad Litem and Payment of Administrator Ad Litem's Fees	No Transcript - Benjamin Brown Order Hearing	No Transcript - Benjamin Brown Order Hearing	
59	Simon Estate	3/25/2015	NO	Court Reporter Cindy Hopkin US Legal Support 5618350220/O'Connell	PETITION TO TAKE POSSESSION, STORE, INSPECT AND APPRAISE ESTATE TANGIBLE PERSONAL PROPERTY	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	
60	Simon Estate	3/31/2015	NO	/Eliot	Evidentiary Hearing - Statement of Claims Extension	No Transcript - Eliot Order Hearing	No Transcript - Eliot Order Hearing	
61	Simon Trust	4/2/2015	NO	Reporter = Pleasanton Greenhill Meek & Marsaa Cindy Bender 561-833-7811/Eliot	CHANGED BACK -- HEARING SIMON TRUST - COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE F/B ELIOT IVAN BERNSTEIN TRANSFER IN FROM 502014CA014637	No Transcript - Eliot Order Hearing	No Transcript - Eliot Order Hearing	
62	Simon Estate	6/4/2015	YES	/O'Connell	HEARING COATES - PETITION FOR AUTHORIZATION TO MOVE, STORE, AND SELL THE TANGIBLE PERSONAL PROPERTY LOCATED AT 7020 LIONS HEAD LANE PETITION FOR INSTRUCTIONS TO DETERMINE WHETHER THE ESTATE SHOULD MAKE A LOAN TO ELIOT BERNSTEIN AND FOR OTHER RELIEF	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150604%20Hearing%20Transcript%20COATES%20Estate%20of%20Simon%20Bernstein.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150604%20Hearing%20Transcript%20COATES%20Estate%20of%20Simon%20Bernstein.pdf	COATES
63	Simon Estate	7/30/2015	NO	/O'Connell	HEARING SIMON ESTATE - STATUS CONFERENCE - TO SCHEDULE A CASE MANAGEMENT CONFERENCE	O'Connell Ordered Hearing	O'Connell Ordered Hearing	PHILLIPS

Supp #	Hearing In	Hearing Date	Transcript	Transcription Service/Party Ordering	Hearing Title	Web Link Transcript	Document Link Transcript	Notes
64	Simon Estate	9/15/2015	YES	/O'Connell	HEARING PHILLIPS 502012CP4391XXXXNB IH SIMON L. BERNSTEIN CASE MANAGEMENT CONFERENCE	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf	http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf	PHILLIPS
65	Simon Estate	3/3/2016	NO	/O'Connell	1. Petition for Authorization for the Payment of Jewelry Appraisals	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	Did not attend no standing?
66	Simon Estate	3/7/2016	NO	/O'Connell	<ul style="list-style-type: none"> • PETITION FOR AUTHORIZATION AND RATIFICATION FOR THE PAYMENT OF THE MOVING AND STORAGE OF, AND FOR AUTHORIZATION TO SELL, THE TANGIBLE PERSONAL PROPERTY PREVIOUSLY LOCATED AT 7020 LIONS HEAD LANE, BOCA RATON, FL. • PETITION TO HAVE THE ESTATE OF SIMON L. BERNSTEIN DECLARED THE BENEFICIARY OF THE J.P. MORGAN CHASE BANK, N.A. IRA ACCOUNT(S). • PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR JULY 1, 2015 THROUGH AUGUST 31, 2015. • PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR SEPTEMBER 1, 2015 THROUGH OCTOBER 31, 2015. • PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR NOVEMBER 1, 2015 THROUGH NOVEMBER 31, 2015. 	No Transcript - O'Connell Order Hearing	No Transcript - O'Connell Order Hearing	Did not attend no standing?
67	Simon Estate	3/7/2016	NO	/Feaman	HEARING STATUS CONFERENCE - Simon Estate	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	Did not attend no standing?
68	Simon Estate	7/27/2016	NO	/Feaman	Motion of Creditor, William E. Stansbury, for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate and for Reimbursement of Advanced Funds	No Transcript - Feaman Order Hearing	No Transcript - Feaman Order Hearing	Did not attend no standing?

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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IY
4 CASE NO.: 502011CP000653XXXXSB

5 IN RE: THE ESTATE OF:
6 SHIRLEY BERNSTEIN,
7 Deceased

8 _____/
9 ELIOT IVAN BERNSTEIN, PRO SE,
10 Petitioner,

11 vs.

12 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
13 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
14 (BOTH PERSONALLY & PROFESSIONALLY); DONALD
15 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
16 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
17 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
18 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
19 DOE'S (1-5000),
20 Respondents.

21 _____/
22 TRANSCRIPT OF PROCEEDINGS
23 BEFORE
24 THE HONORABLE MARTIN H. COLIN

25 South County Courthouse
200 West Atlantic Avenue, Courtroom 8
Delray Beach, Florida 33344

Friday, September 13, 2013
1:30 p.m. - 2:15 p.m.

Stenographically Reported By:
JESSICA THIBAUT

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1 APPEARANCES

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3 On Behalf of the Petitioner:
4 ELIOT IVAN BERNSTEIN, PRO SE
5 2753 NW 34th Street
6 Boca Raton, Florida 33434

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On Behalf of the Defendants:
LAW OFFICE OF MARK MANCERI, P.A.
2929 East Commercial Blvd., Ste. 702
Fort Lauderdale, Florida 33308
(954) 491-7099
mrmlaw@comcast.net
BY: MARK MANCERI, ESQ.

Also present:
Robert Spallina, Esq.
Theodore Bernstein
Mrs. Bernstein, Petitioner's wife

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PROCEEDINGS
THE COURT: All right, we're here on the Shirley Bernstein estate, 2011CP000653. Counsel, make your appearances.
MR. MANCERI: Good afternoon, your Honor, Mark Manceri. I'm here on behalf of Robert Spallina and Donald Tescher, named respondents.
MR. ELIOT BERNSTEIN: Good afternoon, your Honor, my name is Eliot Bernstein, and I'm representing myself pro se.
MR. THEODORE BERNSTEIN: Your Honor, Ted Bernstein, trustee of the estate, and I'm here representing myself today.
THE COURT: Okay, thanks.
Let me just get the case up on the computer, please.
All right, so I set oral argument based upon Mr. Bernstein's emergency motions, and I did so with the cautionary language in the notice of hearing that I assume both of you have, that indicates that I first want to hear what makes this matter emergency as defined by our law, so, because you're pro se, Mr. Bernstein, I want to make sure you're aware

No one is representing as the Personal Representative, Manceri is representing them as estate counsel, their other role. No Personal Rep because when Si died no one notified the Court and a successor PR or Trustee was never elected.

Ted is not "trustee" of the estate as their was no papers approved by court because they never closed estate while Simon was alive.

In Re_ The Estate of Shirley Bernstein.txt
of that particular aspect of what I just said.

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1 Counsel knows. This is not an emergency in
2 your mind. It's an emergency as the law calls
3 it an emergency. You're probably going to show
4 me a case or an administrative order and tell
5 me how this is an emergency.

6 The second part of it is what type of
7 evidentiary hearing we need to have, so you're
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to
10 step up or?

11 THE COURT: You could do it right from
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency
18 because three of the beneficiaries of the
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be
23 cut off of school, insurance, the necessary
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?

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1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or
7 the administrative order where that is defined
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I
10 made a mistake.

11 THE COURT: You're supposed to know that.
12 That's why we're having this hearing.

13 MR. ELIOT BERNSTEIN: Well, I'm pro se.

14 THE COURT: I know. We brought all this
15 judicial effort here. No, sir, this is not a
16 free shot for you.

17 MR. ELIOT BERNSTEIN: I thought that it
18 was an emergency.

19 THE COURT: No, it's not your thought.

20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: I cautioned you in the notice
22 of hearing you so came today -- I kind of
23 cautioned you whether this is an emergency,
24 okay? So you need to demonstrate to me where
25 under our laws this situation that you say the

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1 evidence would show is imminently happening,
2 imminent means today, okay, where an emergency
3 exists.

4 The last two emergencies I did, someone
5 was on the way to the airport waiting to be
6 taken illegally to Iran, a non-hate convention
7 country. We had to get an order out so that
8 Homeland Security would rush down with armed
9 guards and protect a child from going overseas
10 and never coming back to the U.S.

11 The other one was we had to get an order
12 so police could break down the door to prevent
13 someone from being physically killed or harmed
14 physically.

15 Those two were emergencies. Is this an
16 emergency like that?

17 MR. ELIOT BERNSTEIN: I believe so.

18 THE COURT: Okay, all right, so let me
19 tell you, I'm going to let you go forward. If
20 I do not believe so, get your checkbook out.

21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon

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1 what you've told me, but you have this belief
2 that it is. Remember, show me that it's a
3 legal emergency like I gave the example of it.
4 Someone is going to die, be taken out of the
5 jurisdiction, someone's wellbeing today is
6 going to be -- you know, they're going to be
7 without food, they'll be on the street
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. So tell me how that --
14 what evidence is there that this is an
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate
17 representatives when my parents died told us
18 that they were understanding the special
19 circumstances me and my three children are in,
20 and that funds had been set aside and not to
21 worry, there would be no delay of paying their
22 living costs and everything that my father and
23 mother had been paying for years to take care
24 of them, and then they were paying that out of
25 a bank account at Legacy Bank.

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1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had
3 directed Rachel Walker to pay the expenses of a
4 Legacy bank account. It was being paid. And
5 then Mr. Spallina stated that I should or that
6 Rachel should -- she was fired, she should now
7 turn the accounts over to my wife to start
8 writing checks out of an account we've never
9 seen.

10 So I said I didn't feel comfortable
11 writing checks out of an account, especially
12 where it appeared my dad was the signer, so I
13 called Legacy Bank with Rachel and they were
14 completely blown away that checks had been
15 being written out of a dead person's account.
16 Nobody had notified them that Simon had
17 deceased. And that no -- by under no means
18 shall I write checks out of that account, and
19 so then Mr. Spallina told me to turn the
20 accounts over to Janet Craig of Oppenheimer,
21 and Oppenheimer was going to pay the bills as
22 it had been done by Rachel in the past. And so
23 we sent her the Legacy account. We thought all
24 that was how things were being done and, you
25 know, he doesn't give us any documents

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1 whatsoever in the estate, so we don't know, you
2 know, what he's operating out of, but
3 Oppenheimer then started to pay the things --
4 first they said, wait a minute, these are
5 school trust funds -- well, they actually said
6 that after they started paying, and they were a

7 little hesitant that these funds were being
8 used for personal living expenses of everybody,
9 which the other Legacy account had been paying
10 for through an agreement between and my
11 parents. And then what happened was
12 Mr. Spallina directed them to continue, stating
13 he would replenish and replace the funds if he
14 didn't get these other trusts he was in the
15 process of creating for my children in place
16 and use that money he would replenish and
17 replace it.

18 So the other week or two weeks or a few
19 week ago Janet Craig said that funds are
20 running low and she contacted Mr. Spallina who
21 told her that he's not putting any money into
22 those trusts and that there's nothing there for
23 me, and that basically when that money runs out
24 the kids' insurance, school, their home
25 electricity and everything else I would

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1 consider an emergency for three minor children
2 will be cut off, and that was not --

3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say
6 things were as they should be, your parents
7 were alive and they were paying bills of you
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is
20 deceased today a year ago.

21 THE COURT: All right. So you're saying
22 that after your father died, however it
23 happened, bills for you and your children
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

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1 account that they shouldn't have been being
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,
17 electricity, water, food, clothing, everything,
18 100-percent.

19 THE COURT: When did the emergency take
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.
22 They told me if I didn't sign releases that
23 Robert wanted me to sign and turn the money
24 over to my brother, the remaining corpus of the
25 trust, that they were going to shut the funds

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1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent
4 sure, because then I asked them for their
5 operating documents that Mr. Spallina had sent
6 them, and once again we've got un-notarized
7 documents --

8 THE COURT: We'll talk about the notary
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have
11 new improperly notarized documents authorizing
12 the trust to operate, and they sent me
13 incomplete documents which are unsigned on
14 every page of the trust agreement, so they're
15 telling me and I've asked them three times if
16 they have signed copies and three times they've
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as
21 overdo today?

22 MR. ELIOT BERNSTEIN: Health insurance is
23 one.
24 THE COURT: What's overdue today?
25 MR. ELIOT BERNSTEIN: Health insurance is

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00013

1 one.
2 THE COURT: All right, name the health
3 insurance company.
4 MR. ELIOT BERNSTEIN: It's COBRA.
5 THE COURT: COBRA is not a company.
6 MR. ELIOT BERNSTEIN: Blue Cross.
7 THE COURT: Blue Cross, okay. How much is
8 overdue to Blue Cross today?
9 MR. ELIOT BERNSTEIN: \$2,000 or so.
10 THE COURT: It's not \$2,000 a day.
11 MR. ELIOT BERNSTEIN: A month.
12 THE COURT: \$2,000 a month is the health
13 insurance bill?
14 MR. ELIOT BERNSTEIN: Correct.
15 THE COURT: When was that bill due?
16 MR. ELIOT BERNSTEIN: Well, this is the
17 problem. All of the bills are going to them
18 and they don't share with me any of that.
19 THE COURT: So how do you know that you
20 don't have health insurance coverage?
21 MR. ELIOT BERNSTEIN: Only because it's
22 paid by them on that date. Usually on the
23 first.
24 THE COURT: September 1st?
25 MR. ELIOT BERNSTEIN: Yes. As of

♀

00014

1 September 1st I don't believe they have --
2 THE COURT: Is the coverage in effect
3 today?
4 MR. ELIOT BERNSTEIN: I don't know.
5 THE COURT: If you don't know, how do you
6 know that it's an emergency?
7 MR. ELIOT BERNSTEIN: I just know they
8 haven't paid it.
9 THE COURT: Okay, so --
10 MR. ELIOT BERNSTEIN: I don't have --
11 THE COURT: So you have coverage you said
12 as of August 31st you had coverage?
13 MR. ELIOT BERNSTEIN: We don't know. We
14 don't have an accounting if she stated that,
15 I'm sorry.

16 THE COURT: Okay, so you may be covered,
17 you may not be covered?

18 MR. ELIOT BERNSTEIN: Correct.

19 THE COURT: What other bill is unpaid as
20 of today.

21 MR. ELIOT BERNSTEIN: And that's my wife
22 and my children too.

23 THE COURT: Okay.

24 MR. ELIOT BERNSTEIN: Again, they have all
25 the bills, so when they're due, like the

♀

00015

1 electric was due on the 28th, then they usually
2 pay it. I don't even get the bills. So the
3 bills are going straight to Oppenheimer.

4 THE COURT: How do you know
5 authoritatively that they're not being paid?

6 Ma'am, you can't speak. You're not a
7 lawyer, right?

8 MRS. BERNSTEIN: No.

9 THE COURT: Up, move to the back.

10 MR. ELIOT BERNSTEIN: You want her to go
11 back?

12 THE COURT: Yes, because she's disruptive.
13 I can't speak to you and hear her.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: So stay there in absolute
16 silence. You could write something if you
17 want, is that agreed?

18 MRS. BERNSTEIN: Yes.

19 THE COURT: Okay, go ahead. How do you
20 know these monthly bills are not being paid?
21 How do you know the way you know today is
22 Friday, you know what your name is, know
23 meaning indisputable knowledge.

24 MR. ELIOT BERNSTEIN: I can't say for
25 certainty since I don't receive it and manage

♀

00016

1 and pay the bills.

2 THE COURT: Well then how is it an
3 emergency if you don't know?

4 MR. ELIOT BERNSTEIN: Well, because we
5 know that within this next month if electricity
6 isn't paid and there's no money to pay it and
7 he doesn't reimburse the trusts that all those
8 bills on whatever date they were due were
9 lapsing in the next few hours.

10 THE COURT: From today?
11 MR. ELIOT BERNSTEIN: From the 28th.
12 THE COURT: The 28th of August?
13 MR. ELIOT BERNSTEIN: Correct, sir.
14 THE COURT: All right. So you don't know
15 if they've been paid or not. You still have
16 your electric on?
17 MR. ELIOT BERNSTEIN: Yes.
18 THE COURT: Are any services shut off?
19 MR. ELIOT BERNSTEIN: No.
20 MR. ROTHMAN: Maybe like things like lawn
21 and stuff, the lawn guys have been coming, said
22 we owe them money, which we've never heard that
23 from this guy knocking on the door.
24 THE COURT: All right. Is the lawn an
25 emergency situation?

♀

00017

1 MR. ELIOT BERNSTEIN: No. You just asked
2 if any bills --
3 THE COURT: These are not emergencies
4 then.
5 MR. ELIOT BERNSTEIN: Okay.
6 THE COURT: Remember, you filed a motion
7 that stopped the courthouse from working.
8 MR. ELIOT BERNSTEIN: I'm very sorry.
9 THE COURT: We thought you were ready to
10 die on the day you filed the motion.
11 MR. ELIOT BERNSTEIN: I'm very sorry.
12 THE COURT: Okay.
13 MR. ELIOT BERNSTEIN: I believed it was an
14 emergency. The minor children are in there.
15 THE COURT: Let me ask, how old are you?
16 MR. ELIOT BERNSTEIN: I'm 50.
17 THE COURT: Can you pay an electric bill?
18 MR. ELIOT BERNSTEIN: No.
19 THE COURT: Why not?
20 MR. ELIOT BERNSTEIN: I don't have any
21 employment.
22 THE COURT: Why not? If there's an
23 emergency and you're not eating and you have
24 children --
25 MR. ELIOT BERNSTEIN: It's very

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00018

1 complicated, but --
2 THE COURT: Well, could you work to pay
3 your electric bill? If that made a difference?

4 MR. ELIOT BERNSTEIN: No, I haven't been
5 able to gain employment due to
6 Ricco-related-type crimes that have been
7 committed against me and my family.

8 THE COURT: So your kids are without food,
9 you would have them starve rather than go over
10 to Burger King or Dunkin Donuts and get a job
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why
19 my father and mother had set aside these funds
20 to pay those bills because they understood the
21 gravity --

22 THE COURT: So here's what we'll do, we're
23 going to have a hearing, tell me if you're
24 comfortable, whether there's any employment you
25 could get, so I'm going to bring the people

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00019

1 from Florida State Employment who tell me
2 there's hundreds of jobs today that you could
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a
6 laborer right outside this courthouse. Why
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed
11 your children. They're going to pay you money
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.
14 I have tax liens which are under investigation
15 by the inspector general of the tax
16 administration department, currently ongoing,
17 that were put on me as part of the efforts in a
18 Ricco-related lawsuit that I'm involved in.
19 These are just the facts, I'm just telling
20 you --

21 THE COURT: What's to stop you from
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then
24 attach my wages --

In Re_ The Estate of Shirley Bernstein.txt
THE COURT: They don't even know that

25

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00020

1 you're working, and you have an emergency, you
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm
4 working.

5 THE COURT: How do they know you're
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if
8 you read the last articles I put in the
9 petition six or five, one of those two, I put
10 in the articles that have been released in the
11 press that say that they were misusing joint
12 terrorism task force funds and resources to
13 monitor and violate our rights through the
14 Patriot Act violations, and that they have done
15 that to me in the related cases in the federal
16 court.

17 THE COURT: All right, whatever you say.
18 I don't think you want -- if you want a hearing
19 on whether you could go to work today,
20 physically go to work and pay, I'll give you
21 that hearing right now and I'll get someone
22 from Florida Employment. Here's the deal, you
23 lose all your motions as soon as they tell you
24 that you could go outside and work.

25 Do you want that hearing or not? You

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00021

1 could physically earn enough money to pay for
2 food for your children today, you tell me you
3 can't do -- that someone is going to tackle you
4 and stop you from working outside as a laborer
5 to get enough money to feed your children?
6 That's the emergency, your children are
7 starving. You're a parent. You're going to
8 tell me you're going to let your children
9 starve and not work to earn enough money to
10 feed them, that's what you're telling me,
11 correct?

12 MR. ELIOT BERNSTEIN: No. Well, I won't
13 tell you that because, I guess, if you say
14 there's some job that you could get me I'll get
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied
18 for so many over the years --

19 THE COURT: I mean maybe not as a CEO of a
20 company. \$10, \$9.00 an hour jobs --

21 MR. ELIOT BERNSTEIN: I've applied for
22 minimum wage and had trouble, believe me.

23 THE COURT: I'm talking about getting work
24 today -- if you tell me you can't work today
25 I'll have a hearing on that.

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00022

1 MR. ELIOT BERNSTEIN: I can work today.

2 THE COURT: Well, then you could feed your
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get
5 a job --

6 THE COURT: That's not an emergency. You
7 might have a hearing on it down the line, but
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are
11 starving, they haven't eaten, there's no food,
12 and I can't legally get them food because I
13 can't work. I have people who are blind, who
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't
20 want to work, think they're reasons not to work
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on
24 the emergency before we go to some of these
25 others issues which concern me about what he

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00023

1 said.

2 MR. MANCERI: Good afternoon, your Honor.
3 As I stated in my opening, I represent Robert
4 Spallina and Mr. Tescher. I would like to
5 apologize --

6 THE COURT: So their roles are what in
7 this case?

8 MR. MANCERI: They were counsel or are
9 counsel for the estate of Shirley Bernstein, as
10 well as counsel for the estate of Simon
11 Bernstein, who is in front of Judge French.

12 THE COURT: Okay.

13 MR. MANCERI: But before I make my
14 presentation, I would just like to apologize
15 for Mr. Tescher's absence. He's out of town
16 for the holiday.

17 THE COURT: Okay. Who are the PR's that
18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein
20 there is no technically any PR because we had
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from
24 Mr. Bernstein's 57-page filing, which falls
25 lawfully short of any emergency, was a petition

♀

00024

1 to reopen the estate, so technically nobody has
2 letters right now.

3 Simon Bernstein, your Honor, who died a
4 year ago today as you heard, survived his wife,
5 Shirley Bernstein, who died December 10, 2010.
6 Simon Bernstein was the PR of his wife's
7 estate.

8 As a result of his passing, and in attempt
9 to reopen the estate we're looking to have the
10 estate reopened. So nobody has letters right
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's
13 estate it was closed January of this year,
14 there was an order of discharge, I see that.
15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I
23 want to be discharged, my wife's estate is
24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it

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00025

1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

7 MR. MANCERI: That's when the order was
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually
13 filed it and signed the paperwork. November.
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's
16 hard to get through. He does a lot of things
17 when he's dead.

18 THE COURT: I have all of these waivers by
19 Simon in November. He tells me Simon was dead
20 at the time.

21 MR. MANCERI: Simon was dead at the time,
22 your Honor. The waivers that you're talking
23 about are waivers from the beneficiaries, I
24 believe.

25 THE COURT: No, it's waivers of

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00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

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00027

In Re_ The Estate of Shirley Bernstein.txt
1 should not have been notarized in the absentia
2 of the people who purportedly signed them. And
3 I'll give you the names of the other siblings,
4 that would be Pamela, Lisa, Jill, and Ted
5 Bernstein.

6 THE COURT: So let me tell you because I'm
7 going to stop all of you folks because I think
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda
10 warnings?

11 THE COURT: Everyone of you might have to
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a
15 formal document filed here April 9, 2012,
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and
19 notarized on that same date by Kimberly. It's
20 a waiver and it's not filed with The Court
21 until November 19th, so the filing of it, and
22 it says to The Court on November 19th, the
23 undersigned, Simon Bernstein, does this, this,
24 and this. Signed and notarized on April 9,
25 2012. The notary said that she witnessed Simon

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00028

1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

In Re_ The Estate of Shirley Bernstein.txt
22 the estate.

23 THE COURT: What about the fact, counsel,
24 let me see who signed this. Okay, they're all
25 the same as to -- so let me ask this, I have a

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00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived
4 accounting, agreed to a petition to discharge
5 on May 15th, and you signed that. Do you
6 remember doing that? Do you remember that or
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing
9 it and sending it with a disclaimer that I was
10 signing it because my father was under duress
11 and only to relieve this stress that he was
12 being --

13 THE COURT: Well, I don't care -- I'm not
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it
16 with the expressed -- when I signed it I was
17 coned by Mr. Spallina that he was going to send
18 me all the documents of the estate to review.
19 I would have never lied on this form when I
20 signed it. It's saying that I saw and I never
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature
25 notarized?

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00030

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's
5 been addressed with the Governor's office.

6 THE COURT: You need to address this with
7 me.

8 MR. MANCERI: I am going to address it
9 with you.

10 THE COURT: Here's what I don't understand
11 because this is part of the problem here, is
12 that Shirley has an estate that's being
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they

In Re_ The Estate of Shirley Bernstein.txt
16 think it's time to close out the estate.

17 MR. MANCERI: Correct.

18 THE COURT: Waivers are sent out, that's
19 kind of SOP, and people sign off on that.

20 MR. MANCERI: Right.

21 THE COURT: And why are they held up for
22 six months, and when they're filed it's after
23 Simon is already deceased?

24 MR. MANCERI: They were originally filed
25 away, your Honor, under the signature of the

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00031

1 people.

2 THE COURT: No, they weren't filed, that's
3 the whole thing. I'm looking at the file date,
4 filed with The Court.

5 MR. MANCERI: No, they were returned by
6 the clerk because they didn't have
7 notarization. We have affidavits from all
8 those people, Judge.

9 THE COURT: Well you may have that they
10 got sent up here.

11 MR. MANCERI: We have affidavits from all
12 of those people.

13 MR. ELIOT BERNSTEIN: Including Simon?

14 THE COURT: Slow down. You know how we
15 know something is filed? We see a stamp.

16 MR. MANCERI: It's on the docket sheet, I
17 understand.

18 THE COURT: So it's stamped in as filed in
19 November. The clerk doesn't have -- now, they
20 may have rejected it because it wasn't
21 notarized, and that's perhaps what happened,
22 but if in the meantime waiting cured the
23 deficiency of the document, two things happen
24 you're telling me, one, Simon dies.

25 MR. MANCERI: Correct.

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00032

1 THE COURT: And when those documents are
2 filed with the clerk eventually in November
3 they're filed and one of the documents says, I,
4 Simon, in the present.

5 MR. MANCERI: Of Ms. Moran.

6 THE COURT: No, not physically present, I
7 Simon, I would read this in November Simon
8 saying I waive -- I ask that I not have to have
9 an accounting and I want to discharge, that

In Re_ The Estate of Shirley Bernstein.txt
request is being made in November.

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MR. MANCERI: Okay.
THE COURT: He's dead.
MR. MANCERI: I agree, your Honor.
THE COURT: Who filed that document?
MR. MANCERI: Robert, do you know who
filed that document in your office?
MR. SPALLINA: I would assume Kimberly
did.
MR. MANCERI: Ms. Moran.
THE COURT: Who is she?
MR. MANCERI: She's a staff person at
Teschler and Spallina.
THE COURT: When she filed these, and one
would think when she filed these the person who
purports to be the requesting party is at least

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alive.
MR. MANCERI: Understood, Judge.
THE COURT: Not alive. So, well -- we're
going to come back to the notary problem in a
second.
MR. MANCERI: Okay.
THE COURT: In the meantime, based upon
all that I discharge the estate, it's closed.
Here's what I don't understand on your
side, you're representing yourself, but the
rules still apply. You then file, Eliot
Bernstein, emergency petitions in this closed
estate, it's closed.
MR. ELIOT BERNSTEIN: You reopened it.
THE COURT: When did I reopen it?
MR. MANCERI: No, it hasn't been reopened,
your Honor.
THE COURT: There's an order that I
entered in May of 2013 denying an emergency
petition to freeze assets. You filed this one
in May. Do you remember doing that?
MR. ELIOT BERNSTEIN: I believe so.
THE COURT: And what you said was there's
an emergency in May, you want to freeze the
estate assets appointing you PR, investigate

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the fraud documents, and do a whole host of
other things, and the estate had been closed.
The reason why it was denied among other

4 things, one, it may not have been an emergency,
5 but, two, the case was not reopened. There's
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to
8 someone.

9 THE COURT: You may have paid to file what
10 you filed, but there's no order reopening the
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my
13 mistake.

14 THE COURT: It's closed, the PR is
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to
17 reopen because we discovered the fraudulent
18 documents.

19 THE COURT: But then you still had to ask
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your
22 Honor, that they haven't come to you in all of
23 that time, he said he just got notified from
24 the governor the other day about this fraud, I
25 put it in your court and served him months ago

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00035

1 and he never came to me or you or anybody else
2 to know that the police are calling him, the
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another
5 emergency similarly, served you folks, Tescher
6 and Spallina. I denied it because it wasn't an
7 emergency because nothing was happening I
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I
10 understand emergency --

11 THE COURT: The estate wasn't open and it
12 really wasn't an emergency at the time. And
13 then you filed a motion in the ordinary course
14 to have things heard, and a motion to -- bunch
15 of other motions, to remove PR.

16 MR. ELIOT BERNSTEIN: Well, with each
17 successive crime we found -- by the way, that's
18 kind of why this is an emergency because with
19 the use of these fraudulent documents a bunch
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your
24 Honor, but Mr. Spallina abused her so much and

In Re_ The Estate of Shirley Bernstein.txt
she ran up a \$10,000 bill.

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00036

1 THE COURT: Doesn't help me.

2 MR. ELIOT BERNSTEIN: Doesn't help you,
3 okay.

4 THE COURT: Then in August you started
5 again, September you started again, and at
6 least I set the hearing because it's kind of
7 hard when I read your allegations I couldn't
8 figure it out. Now I think, okay -- so now let
9 me ask you this, counsel.

10 MR. MANCERI: Yes, sir.

11 THE COURT: So the pleadings get filed,
12 the estate gets closed.

13 MR. MANCERI: Correct.

14 THE COURT: Simon dies. So what happened
15 with Shirley's estate?

16 MR. MANCERI: Shirley's estate is closed,
17 as you said.

18 THE COURT: I know the administration is
19 closed. What happened with her estate? Where
20 did that go? Did she have a will?

21 MR. MANCERI: Her assets went into trusts,
22 and her husband had a power of appointment
23 which he exercised in favor of Mr. Bernstein's
24 children.

25 THE COURT: Okay.

♀

00037

1 MR. MANCERI: And that leads to the trust
2 that he mentioned at Oppenheimer which he
3 misled The Court as to what's happening with
4 that.

5 THE COURT: Let me slow you down.

6 MR. MANCERI: Okay.

7 THE COURT: So her estate assets went into
8 a trust?

9 MR. MANCERI: Correct.

10 THE COURT: And that trust is --

11 MR. MANCERI: And Ted Bernstein, I
12 believe, is the trustee of that trust.

13 THE COURT: And you're brothers?

14 MR. THEODORE BERNSTEIN: That's correct.

15 THE COURT: All right. So then -- so
16 Simon really wasn't alive long when he died as
17 trustee?

18 MR. MANCERI: Not terribly long.

19 THE COURT: All right. So he was a
20 trustee. Was she a trustee as well?

21 MR. MANCERI: He died, your Honor. Again
22 she died December 10, 2010. He died September
23 of 2012.

24 THE COURT: Right, but was he a trustee
25 also of Shirley's trust?

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00038

1 MR. MANCERI: Yes.

2 THE COURT: So she dies, the estate is
3 closed, her assets are in a trust. Simon then
4 dies. What happened with his estate? Judge
5 French is hearing it, but tell me what
6 happened.

7 MR. MANCERI: My understanding is that
8 money went into a trust for the grandchildren.

9 THE COURT: Grandchildren of Eliot?

10 MR. MANCERI: Well there's actually ten of
11 them, ten grandchildren, which he has three.

12 THE COURT: So the beneficiary level for
13 Simon was he skipped over his children and gave
14 everything to the grandchildren?

15 MR. MANCERI: That's correct.

16 MR. ELIOT BERNSTEIN: No.

17 THE COURT: That's not what happened with
18 your father's estate?

19 MR. ELIOT BERNSTEIN: No.

20 THE COURT: That's not what the rule says
21 to do?

22 MR. ELIOT BERNSTEIN: No.

23 THE COURT: What does the rule say to do?

24 MR. ELIOT BERNSTEIN: The rule is not
25 properly notarized. He didn't appear --

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1 THE COURT: What did the will say that The
2 Court used?

3 MR. ELIOT BERNSTEIN: The Court filed a
4 will and amended trust, both improperly
5 notarized.

6 THE COURT: You didn't answer my question,
7 so stop speaking.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: If you don't answer me you
10 give up your right to participate. Stop, don't
11 speak, all right, because you waived your right
12 because you refused to answer my question,

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okay. So I'll let you answer it.

MR. MANCERI: If I can, your Honor.

THE COURT: Go ahead.

MR. MANCERI: The ten grandchildren shares -- and I want to be clear on this, this gentleman is only a tangible personal property beneficiary. He and his own proper person. And the mother. That's all he's entitled to. No cash request, nothing directly to him, because of his financial problems among other issues.

THE COURT: Okay.

MR. MANCERI: He has been asked to

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establish accounts for the benefit of his children and he refused to do it.

THE COURT: I'm not interested in that, here's what I'm interested in.

MR. MANCERI: All right.

THE COURT: So before this latest realm of pleadings were filed, both parents are deceased?

MR. MANCERI: Yes.

THE COURT: They both have trusts?

MR. MANCERI: Right.

THE COURT: Simon's trusts are for the benefit of the grandchildren?

MR. MANCERI: Correct.

THE COURT: And Shirley's trust is for the benefit of who?

MR. MANCERI: The grandchildren now because Simon died.

THE COURT: So children-level, Eliot, Ted were skipped over as beneficiaries?

MR. MANCERI: That's correct, your Honor.

THE COURT: Now, tell me the best you can the way Eliot described that there was some deal that had been in effect with Shirley and Simon while they were alive that kept on going

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after Shirley died to help support his children.

MR. MANCERI: That I can't comment on personally, your Honor, because I never met either one of them.

THE COURT: Do you know anything about

7 that?

8 MR. MANCERI: He was the draftsman. His
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they
19 were alive they were helping to support Eliot's
20 family?

21 MR. SPALLINA: To the best of my
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si

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00042

1 was paying bills.

2 THE COURT: And when he died in September
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that
5 we set up in the name of Bernstein Family
6 Reality. That was owned by three old trusts
7 not that we created, but were created by
8 Mr. Bernstein in 2006 that owned the house that
9 the family lives in, so there was an LLC that
10 was set up, Bernstein Family Realty, LLC,
11 there's the three children's trust that own the
12 membership interest in that, and there was a
13 bank account at Legacy Bank that had a small
14 amount of money that Si's assistant Rachel had
15 been paying the bills out of on behalf of the
16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as
18 trustee of the three trusts and in control of
19 the operations of that entity, assigned
20 themselves as manager, had the account moved
21 from Legacy to Oppenheimer, and continued to
22 pay the bills they could with the small amount
23 of money that was in the Legacy account.

24 At this time, the Legacy account was
25 terminated because there were no funds left,

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00043

1 they started using the funds inside the three
2 trusts at Oppenheimer to pay for health,
3 education, maintenance and support --

4 THE COURT: Of the grandchildren?

5 MR. SPALLINA: Of the grandchildren. And
6 it was probably at the time that Mr. Bernstein
7 died about \$80,000 in each of those trusts last
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the
11 last year -- the kids go to private school,
12 that's an expensive bill that they pay, think
13 it's approximately \$65,000. There were other
14 expenses throughout the year. The trust assets
15 as of this week I spoke to Janet Craig, have
16 depleted down collectively across the three
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of
23 the estate right now, so let's leave the estate
24 of Shirley and Si completely separate. Just
25 trying to get to the issue that Mr. Bernstein

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00044

1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called
4 me and said that the trusts are coming to the
5 end of their useful life, it doesn't pay to
6 administer them anymore. They're going to make
7 final distribution to Mr. Bernstein and his
8 wife as the guardians of their children.

9 They sent out standard waivers and
10 releases for him to sign in exchange for the
11 remaining money that was there. There was a
12 disagreement that ensued and I have the e-mail
13 correspondence between Eliot and Janet Craig at
14 Oppenheimer that this is extortion and that
15 Mr. Spallina and you have devised a plan not to
16 give us the rest of the money. That's not the
17 case at all. In fact, we told them to
18 distribute the rest of the money, there's been
19 \$12,000 in bills submitted to them that they
20 are either paying today or on Monday, and the
21 \$14,000 or some-odd dollars that would be left

22 are in securities that they have to liquidate,
23 supposedly they would have good funds today,
24 but there was some threats of litigation and so
25 they said that it might be prudent to hold onto

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00045

1 this. There's also some expenses outstanding
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's
4 the other part of the estate planning that
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say
7 that at the death of the second of us to die,
8 pursuant to Si's exercise over his wife's
9 assets, that all of those assets would go down
10 to ten grandchildren's trust created under
11 their dockets.

12 Mr. Bernstein was on a call while his
13 father was alive with his other four siblings
14 where he had called me and said, Robert, I
15 think we need to do a phone call with my
16 children to explain to them that I'm going to
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,
21 there's a trust that deals with that, or more
22 than one trust.

23 MR. SPALLINA: There's both Si's estates
24 and Shirley's estates basically say after and
25 again there is some litigation.

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1 THE COURT: And that's different than this
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three
4 trusts that were just designed to hold.

5 THE COURT: Who's administering those
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein
8 is the trustee of his mother's trust and holds
9 three assets.

10 THE COURT: Who is the trustee of the
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

In Re_ The Estate of Shirley Bernstein.txt
16 was a claim filed by a former employee of
17 Mr. Bernstein for \$2.5 million-plus, so there's
18 litigation that's been pending in the estate
19 now for basically since this date, and those
20 funds are just sitting in a partnership account
21 at JP Morgan with no distributions that have
22 been made at all.
23 THE COURT: So what's the total corpus of
24 the what I'll call the ten grandchildren's
25 trust of both grandparents?

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1 MR. SPALLINA: Not taking into account the
2 litigation?

3 THE COURT: Well, no, you haven't paid
4 anything out yet.

5 MR. SPALLINA: I would say it's
6 approximately \$4 million.

7 THE COURT: So there's litigation going on
8 in Simon's --

9 MR. SPALLINA: Estate.

10 THE COURT: And at some point when that
11 claim is resolved the trust will then be
12 administered by your firm and...

13 MR. SPALLINA: No, that's not the case.
14 Each of the adult children for their own
15 children are designated to serve as trustee of
16 their children's trust.

17 THE COURT: So a distribution takes place
18 then once the money gets to the trust age?

19 MR. SPALLINA: Correct, and today again
20 the Shirley Bernstein trust does have liquid
21 assets in it. There was two properties, real
22 estate properties, the residential home and a
23 condo on the beach. The condo on the beach
24 sold back in April or May. There were funds
25 that came into the account at that time. Ted

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1 was going to make partial distribution. He
2 sent out an e-mail with tax I.D. numbers and
3 the naming of the trust to the five children
4 for the purposes of them opening up the
5 accounts.

6 THE COURT: Okay, what happened?

7 MR. SPALLINA: Seven of ten accounts were
8 opened and were actually funded this week with
9 \$80,000.

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THE COURT: Total or each?
MR. SPALLINA: Each.
THE COURT: Three of Eliot's --
MR. SPALLINA: Are not open. And we've
asked multiple --
THE COURT: And he executed documents to
open \$240,000 immediately or very quickly go
into those accounts?
MR. SPALLINA: Yes, sir.
THE COURT: Go ahead.
MR. SPALLINA: Now, there was a question
from our client as trustee of his mother's
trust because he has apprehension as do the
other siblings as to whether or not
Mr. Bernstein is the proper trustee for that
trust.

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THE COURT: Okay, all right.
MR. SPALLINA: We had discussions about
possibly making emergency distributions to pay
the expenses, but not necessarily --
THE COURT: Not giving the money directly
to him.
MR. SPALLINA: Not necessarily put in all
\$80,000 in all three of those trusts.
THE COURT: Does the trust pay expenses
directly or give money to the parent who pays
the expenses? Do you pay the electric bill or
do you give money to Eliot to pay the electric
bill?
MR. SPALLINA: Today?
THE COURT: Now, how does that work with
the others kids?
MR. SPALLINA: They were just funded, but
normally the trustee of the trust would pay for
expenses on behalf of the beneficiary if
they're minor children. Some of the children
here are adults. So to the extent they're
adults they would make distribution.
THE COURT: So what's the resolution of
the notary problem? Has that been resolved?
MR. SPALLINA: I can speak to it.

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MR. MANCERI: Please, Robert, go ahead.
The Judge is addressing you, be my guest.
MR. SPALLINA: In April of last year we

In Re_ The Estate of Shirley Bernstein.txt
4 met with Mr. Bernstein in April of 2012 to
5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he
9 signed these not notarized. When they were
10 sent back to be notarized, the notary notarized
11 them without him re-signing it, is that what
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed
17 affidavit from each of the children other than
18 Mr. Bernstein that the original documents that
19 were filed with The Court were in fact their
20 original signatures which you have in the file
21 attached as Exhibit A was the original document
22 that was signed by them.

23 THE COURT: It was wrong for Moran to
24 notarize -- so whatever Moran did, the
25 documents that she notarized, everyone but

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1 Eliot's side of the case have admitted that
2 those are still the original signatures of
3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those
7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with
9 the oral argument for today.

10 So I only have in front of me Shirley's
11 estate. Shirley's estate is closed.

12 MR. MANCERI: Your Honor, could I bring
13 you up to speed on one thing maybe you're not
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion
17 to actually reopen the estate when we learned
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed
21 August 28th of this year. Do you have a copy
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,
24 but let's see. Because I have an August 28th

In Re_ The Estate of Shirley Bernstein.txt
file, I have that.

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00052

1 MR. MANCERI: You have that.
2 THE COURT: Motion to reopen the estate.
3 MR. MANCERI: Right, your Honor. We set
4 it for an evidentiary hearing.
5 THE COURT: When is it set?
6 MR. MANCERI: It's set for October 28th,
7 your Honor, for an hour at 11:00 a.m.
8 THE COURT: I'm going to decide on
9 Shirley's case whether to open it and how to
10 deal with whatever issues pertain to this, but,
11 Eliot, on your side you have an emergency
12 motion to freeze assets of the estate, so I
13 would say to you with a closed estate where the
14 PR, Simon, has been already discharged, and a
15 petition for discharge approved, what assets
16 are there in a closed estate where the estate
17 assets have already been distributed that I can
18 now in your motion freeze?
19 MR. ELIOT BERNSTEIN: The petition --
20 THE COURT: Listen to my question. It's
21 artful. What assets now that the estate's been
22 closed, that the estate's been fully
23 administered, and the estate has been
24 discharged, can I freeze that I could identify
25 still belong to Shirley's estate?

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1 MR. ELIOT BERNSTEIN: I can't tell you
2 because I never got a document regarding the
3 assets.
4 THE COURT: But when you say it's an
5 emergency hearing --
6 MR. ELIOT BERNSTEIN: But I was supposed
7 to get those documents, correct?
8 THE COURT: Well, I don't know what
9 documents --
10 MR. ELIOT BERNSTEIN: I was a beneficiary,
11 unlike they said, me, my brother was cut out of
12 my mother's estate and my older sister.
13 THE COURT: They said you were a
14 beneficiary of personal property.
15 MR. ELIOT BERNSTEIN: No, I was the third
16 beneficiary to the entire estate.
17 THE COURT: All right, I don't know.
18 MR. SPALLINA: At one point he was.

19 MR. MANCERI: Early on, your Honor.
20 THE COURT: But on the will that was
21 probated?
22 MR. MANCERI: No.
23 THE COURT: Okay, so maybe you don't know
24 then, your mother changed her will, they say.
25 MR. ELIOT BERNSTEIN: Did my mother change

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1 her will?
2 MR. SPALLINA: You know that your father
3 did.
4 MR. ELIOT BERNSTEIN: No, he asked if my
5 mother did.
6 MR. SPALLINA: Oh, yes.
7 THE COURT: Okay, all right --
8 MR. ELIOT BERNSTEIN: After she was dead
9 using alleged --
10 THE COURT: Not after she was dead.
11 MR. ELIOT BERNSTEIN: No, your Honor, my
12 father went back into my mother's estate and
13 made changes after we believe he was dead using
14 documents that are signed forged, by the way
15 those documents you're looking at --
16 THE COURT: Here's the thing.
17 MR. ELIOT BERNSTEIN: Yes.
18 THE COURT: You want me to freeze assets
19 of an estate that's already been fully
20 probated. I can't freeze something that
21 doesn't exist.
22 MR. ELIOT BERNSTEIN: Can you reopen it
23 because it was closed on fraudulent documents?
24 THE COURT: They asked for the estate to
25 be reopened. They want to have a hearing on

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1 that.
2 MR. ELIOT BERNSTEIN: Okay.
3 THE COURT: Do you have responses to your
4 motion?
5 MR. MANCERI: Mr. Spallina filed it, but I
6 don't believe so yet, your Honor.
7 THE COURT: So we know one person wants to
8 reopen it, Eliot, correct? Who did you notice
9 of that motion?
10 MR. MANCERI: This motion was served on
11 Ted Bernstein, Pamela --
12 THE COURT: Ted, do you want the estate

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reopened, Shirley's estate reopened?
MR. THEODORE BERNSTEIN: I think you're asking me a legal question, your Honor.
THE COURT: Does anyone represent you?
MR. MANCERI: Not at the moment, your Honor. I may depending on how far this goes.
THE COURT: All right, well, what I'm getting at is, is anyone opposing the reopening of the estate?
MR. MANCERI: No, your Honor. We want to open it to cure what his allegation is.
THE COURT: First step, one, is reopen.
MR. MANCERI: Correct.

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THE COURT: So why do we have to wait until the end of October to reopen the estate when we could do that in mid-September?
MR. MANCERI: No reason, your Honor.
THE COURT: Any reason why we need to wait?
MR. ELIOT BERNSTEIN: No.
THE COURT: All right, so...
MR. MANCERI: You haven't heard any objections to this from anybody else, have you Robert?
MR. SPALLINA: No.
THE COURT: All right, so get me up an agreed order that I could open up the estate.
MR. MANCERI: Okay, you'll take care of that, Robert?
MR. SPALLINA: Uh-Huh.
MR. MANCERI: We'll take the October hearing off your docket.
THE COURT: You don't need an evidentiary hearing to prove it, I'm going to do it, and under these circumstances that makes sense.
Okay, so I'm going to have it reopen the estate. So now the question is --
MR. MANCERI: Your Honor, just so I'm

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clear.
THE COURT: Yes, Shirley's estate.
MR. MANCERI: The reason we asked to reopen it is to cure or address this alleged fraud.
THE COURT: But all I'm physically doing

In Re_ The Estate of Shirley Bernstein.txt
7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be
9 clear.

10 THE COURT: I don't want you to get rid of
11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it
14 is in relief that you want now that the estate
15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever
18 you want relief-wise to happen with respect to
19 Shirley's estate, not Shirley's trust, but
20 Shirley's estate, you could have a hearing on
21 that. I'll combine everyone who has an
22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to
24 say, your Honor, after this was noticed I got
25 into this matter. I have a conflict on the

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1 28th at that hour. If we could move it to the
2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.
4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the
6 28th.

7 THE COURT: I don't know, I'll look.

8 So let me try to make some progress, all
9 right.

10 So today is whether in Shirley's estate
11 there's an emergency, here is my order, no.
12 Okay?

13 MR. MANCERI: Okay.

14 THE COURT: Next, whether -- what type of
15 evidentiary hearing, if any, needs to be held.
16 For Shirley's estate purposes I guess I have to
17 figure out the following: It appears that
18 there could be some problem in the documents
19 that took place to lead Shirley's estate to be
20 closed and distributed as it took place, okay
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to
24 documents that may have been improperly
25 notarized. Now. That doesn't mean that

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1 anything happened, it just means the documents
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and
5 see whether there's anything that has to happen
6 differently than what already happened with
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in
9 making that determination, would you like us to
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to
18 understand something. Let's say you prove what
19 seems perhaps to be easy, that Moran notarized
20 your signature, your father's signature, other
21 people's signatures after you signed it, and
22 you signed it without the notary there and they
23 signed it afterwards. That may be a wrongdoing
24 on her part as far as her notary republic
25 ability, but the question is, unless someone

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1 claims and proves forgery, okay, forgery,
2 proves forgery, the document will purport to be
3 the document of the person who signs it, and
4 then the question is, will something different
5 happen in Shirley's estate then what was
6 originally intended? Originally intended they
7 say, the other side, was for Simon to close out
8 the estate. The estate they say was small.
9 The estate gave everything to the trust and
10 that's what it did, and that was the end of the
11 estate.

12 Remember, this is not everything about
13 your parents and their estate planning. This
14 is one small component, Shirley's estate alone,
15 not her trust, and nothing to do with what
16 happened with Simon, okay, because that's not
17 before me. Simon's case is before Judge
18 French.

19 Having said that, one of the other reasons
20 why I have to consider whether your matter is
21 an emergency, even if there was something that

22 I could enter an order on or have a hearing on
23 immediately that could free up money from
24 Shirley that you personally would be entitled
25 to, you tell me you don't even know that you

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1 were not a beneficiary of the estate, so
2 certainly you're not doing your groundwork to
3 tell me if it's an emergency or not because it
4 could be an emergency if you were a beneficiary
5 of her will that was probated, but you don't
6 even know one way or the other. So you could
7 be a stranger to the estate. She may have
8 disinherited you from the estate. She may have
9 chosen to only give you personal property. So
10 if you're not entitled to anything, you don't
11 have an emergency. You're not entitled to
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are
25 beneficiaries of the estate.

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1 THE COURT: But what if you weren't a
2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.
4 My dad doesn't change that until a
5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it, but
7 you're interested in some financial relief. If
8 you don't want to go out and get a laborer job
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding
12 your children or paying your electric bills,
13 you are. You have to do what a parent does to
14 take care of their children. It doesn't sound
15 like you're doing everything that you can, but

16 that's technically not before me.
17 But in the meantime not knowing a whole
18 lot about this case, it's my first time I'm
19 really having this type of dialogue. I heard
20 some voice that said there's cash to feed your
21 children that could become readily in your
22 pocket or in someone's pocket to pay bills that
23 could help your children. I heard that. They
24 say the stumbling block to your children
25 getting the benefit of that money is you. I

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1 don't know whether that's true or not, but if
2 you want your children to imminently get money
3 and they have imminent money to give your
4 children, maybe you want to sit with Ted and
5 that other side and see if there's some money
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money
13 comes to my children and it was supposed to
14 have gone to me, and these documents that are
15 all shady and unsigned wills with --
16 un-notarized wills and trusts don't stand. The
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.
20 Maybe two, three years from now as a result of
21 the same trust litigation you'll be right, but
22 in the meantime according to you there's money
23 that could feed your children that you don't
24 want to touch because you think the money
25 should go to you instead of your children that

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1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their

In Re_ The Estate of Shirley Bernstein.txt
10 parents have. The children don't even know.
11 They're not even represented.

12 THE COURT: Well, the parents represent
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a
18 subpoena and said it. I had to get two lawyers
19 because my attorney couldn't represent both
20 sides of this.

21 MR. MANCERI: I'm very concerned about
22 something Mr. Bernstein just told The Court.
23 He's the one objecting they're in conflict,
24 he's stating from what I'm piecing together
25 that he believes that his children are getting

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1 money that the parents really was supposed to
2 go to him personally. He's got the inherent
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I
5 don't.

6 THE COURT: Okay, here's the point, if
7 you're at a point where you're asking The Court
8 for an emergency because you can't feed
9 children, and there's someone around the corner
10 that's holding out a \$20 bill and says you
11 could have it to feed your children, and you
12 go, you know, I'm not going to take that to
13 feed my children because I want to have a court
14 determine that it really was mine, then I don't
15 know that you're treating this as an emergency.
16 Emergencies mean you figure out a way of
17 getting the money to your children sooner than
18 later, and they say it's happening imminently,
19 cash that could pay bills for your children.
20 That's what they say. If it's an emergency and
21 your kids are starving, and you as the parent
22 say that might be my money and not my kids', so
23 I want to wait for two or three years and let
24 the money stay in a bank account until I could
25 figure it out, and not feed my children, I

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1 think you need to reflect upon some of your
2 decisions.

3 MR. MANCERI: Your Honor --

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THE COURT: What?
MR. MANCERI: I'm not saying we're going to do this, Judge, but this sounds like this may need an ad litem for these kids.
THE COURT: Well, I don't know, let's not add fuel to the fire.
MR. MANCERI: Because I'm troubled by what he's saying.
THE COURT: All right, so --
MR. ELIOT BERNSTEIN: Here's why I have not taken that money.
THE COURT: Why?
MR. ELIOT BERNSTEIN: Because if you told me, your Honor, that you just murdered him, and here's \$20 from his pocket to feed your kids from the crime --
THE COURT: If they were starving I would take the \$20.
MR. ELIOT BERNSTEIN: On that advice, I'll take the money.
THE COURT: If they were starving --
MR. ELIOT BERNSTEIN: On that advice --

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THE COURT: Your kids are starving. I'm not giving you advice.
MR. ELIOT BERNSTEIN: On that advice, I will --
THE COURT: The \$20 didn't murder anybody, did it? Did the \$20-bill murder someone?
MR. ELIOT BERNSTEIN: It's stealing money from people.
THE COURT: They're not -- this isn't stolen money. This is your parents' money.
MR. ELIOT BERNSTEIN: If I take that money and put it in my kids' accounts, it's actually taking money from what we believe are the true and proper beneficiaries --
THE COURT: Which is you.
MR. ELIOT BERNSTEIN: No, through -- one of, through --
THE COURT: So meanwhile if your kids are starving and you don't take the money, all I could say to you, there's obviously -- if you look at the documents I mean you're not going to confess to killing Kennedy as part of receiving the money, but if they want to give you money for your children and you don't want

In Re_ The Estate of Shirley Bernstein.txt
25 to take it because you think it's yours, and

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1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's
6 part of a fraud that forged documents were used
7 to --

8 THE COURT: But it's still your parents
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take
17 the money without explanation on it. I agree.
18 Listen, the only reason I didn't want to take
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one
21 is accusing you of fraud. If they give you
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is

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1 signing a receipt. You don't know where the
2 money came from. You're not signing off --
3 you're not saying that you make a declaration
4 that the money came from them, the other side
5 to you in only legal means. You're just
6 signing a receipt.

7 MR. MANCERI: But he is signing off on
8 that he's going to honor the terms of the
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee
11 for your children, you are -- you have a duty
12 to only use it for the children, not yourself.
13 Not you. You still have to work for you. Now,
14 you don't have to work for your children,
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on
18 your children if that's how you get it.

19 MR. ELIOT BERNSTEIN: Right.
20 THE COURT: That's all we're talking about
21 is money to feed your children.
22 MR. ELIOT BERNSTEIN: You see, if the
23 money came to me, it's also for me and my wife
24 and feeds our children.
25 THE COURT: That's not what they said. It

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1 does not go to support you and your wife.
2 MR. ELIOT BERNSTEIN: If the money comes
3 to me as a beneficiary, it does. If all these
4 nonsense documents that are forged and --
5 THE COURT: If they want to give it to you
6 only under their condition this is because
7 their version is it belongs to your children.
8 MR. ELIOT BERNSTEIN: Right.
9 THE COURT: Don't accept it, you don't get
10 it. If you accept it, it goes to your
11 children. You may not like that, but it only
12 could be used for your children, because that's
13 the deal that they make. You take that deal
14 because you don't want your kids to starve.
15 You may not like it, you want to be
16 supported too, but they don't want to support
17 you. They don't think it's your money, they
18 think it's your children's money. So why turn
19 that -- maybe you're entitled to it, but why
20 turn down money that could help support your
21 children in the meantime.
22 MR. ELIOT BERNSTEIN: If your logic is
23 correct, your Honor, I agree.
24 THE COURT: Well, I don't know if my logic
25 is correct.

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1 MR. ELIOT BERNSTEIN: Here's the legal
2 problem --
3 THE COURT: Stop, no, the hearing is over.
4 I'm not giving more legal advice. Your hearing
5 goes on, okay, see you.
6 MR. MANCERI: Your Honor, any chance of
7 resetting it?
8 THE COURT: I'm going to ask my office to
9 flip it around to the afternoon. I'll take
10 care of that.
11 MR. MANCERI: Thank you, your Honor.
12 We'll submit an order to your Honor.

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THE COURT: Okay, clear it with him and see if you could actually get something that makes sense. It's really narrow.

MR. MANCERI: It's very narrow. We've got the transcript, Judge.

THE COURT: It's only really that there's no emergency here. Everything everyone raises on the 28th.

MR. MANCERI: Very good, Judge. Do you think we can do it in an hour, Judge?

THE COURT: We'll try.

MR. MANCERI: Okay.

MR. ELIOT BERNSTEIN: I'm sorry, your

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1 Honor, for calling an emergency.

2 THE COURT: All right. Just there's a lot
3 of work when you call something an emergency.

4 MR. ELIOT BERNSTEIN: I didn't understand
5 what you go through.

6 THE COURT: Okay, bye.

7 MR. MANCERI: It's an evidentiary, Judge,
8 we're going to call witnesses.

9 THE COURT: Witnesses and evidence.

10 MR. MANCERI: Very good.

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12 (The proceeding was concluded at 2:15 p.m.)

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1 CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA)

4 COUNTY OF PALM BEACH)

5

6 I, Jessica Thibault, a Court Reporter,

7 certify that I was authorized to and did
8 stenographically report the proceedings in the
9 above-styled cause before the Honorable Martin H.
10 Colin, pages 1 through 72; and that the transcript
11 is a true record of my stenographic notes.
12

13 I further certify that I am not a
14 relative, employee, attorney, or counsel of any of
15 the parties, nor am I a relative or employee of any
16 of the parties' attorneys or counsel connected with
17 the action, nor am I financially interested in the
18 action.
19

20 Dated this 17th day of September, 2013.
21

22 _____
23 Jessica Thibault
Court Reporter
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IN THE CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502011CP000653XXXXSP

IN RE: ESTATE OF SHIRLEY BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN,
Petitioner,

V.

TESCHER & SPALLINA, P.A., et al.,
Respondents.

-----/

HEARING BEFORE THE HONORABLE
MARTIN H. COLIN

Taken before Michael Todd Berkowitz, Shorthand
Reporter and Notary Public in and for the State of
Florida at Large.

- - -

200 West Atlantic Avenue
Delray Beach, Florida 33344
Monday, October 28, 2013
4:00 P.M. - 5:09 P.M.
Michael T. Berkowitz, Court Reporter.

1 APPEARANCES:

2 On behalf of the Petitioner:

3 HUTH & PRATT

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5 BY: BRANDAN J. PRATT, ESQ.

6

On behalf of Ted Bernstein, Donald R. Tescher, Esq.,

7 Robert L. Spallina, Esq:

8 MARK MANCERI, ESQ.

2929 East Commercial Boulevard

9 Suite 702

Fort Lauderdale, Florida 33308

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P R O C E E D I N G S

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3 THE COURT: All right. Good Afternoon.
4 Judge Colin. 2011CP000653. The Estate of
5 Shirley Bernstein. Can everyone make their
6 appearances.

7 MR. BERNSTEIN: Ted Bernstein.

8 MR. MANCERI: Good afternoon, Your Honor.
9 Mark Manceri. I'm here on behalf of Ted
10 Bernstein as successor personal representative
11 of the Estate of Shirley Bernstein, and I'm
12 here on behalf of Donald Tescher and Robert
13 Spallina.

14 MR. PRATT: Good afternoon, Your Honor.
15 Brandan Pratt appearing on behalf of Eliot
16 Bernstein, and I also have with me here today
17 Eliot Bernstein and his wife, Candace
18 Bernstein.

19 THE COURT: Okay. So this was a hearing
20 that was set pursuant to an order of September
21 24, 2013, that order being an order on notice
22 on emergency motion to freeze assets, and it
23 says the purpose of this hearing is to address
24 any alleged improprieties or defects in the
25 form of pleadings or other documents submitted

1 to the Court in furtherance of the Estate of
2 Shirley Bernstein which was previously closed.

3 MR. PRATT: Your Honor, I'd like to evoke
4 the rule of sequestration.

5 THE COURT: Hold on. I'll be right with
6 you. Okay. All right. The rule was evoked.
7 Are there any witnesses on either side that
8 are not parties that are going to testify?
9 Please stand up.

10 MR. PRATT: Non parties, Your Honor?

11 THE COURT: Parties are allowed to stay.

12 MR. PRATT: I believe Mr. Tescher and Mr.
13 Spallina are non parties to the estate
14 proceedings.

15 MR. MANCERI: No. They have been named by
16 your client.

17 THE COURT: They're in the heading of the
18 adversary proceeding.

19 Okay, what's your name, ma'am?

20 MS. MORAN: Kimberly Moran.

21 THE COURT: So Kimberly, you may or may not
22 be called as a witness. You need to wait
23 outside. You can't allow anyone to discuss
24 their testimony in your presence, or you
25 participate in that as well. If someone

1 violates what I just said, find my bailiff,
2 let me know, and we'll deal with them.

3 MR. ROTH: Just to let you know, Your
4 Honor, David Roth on behalf of Ms. Moran.

5 THE COURT: Okay. Ms. Moran, that lady
6 that's just leaving?

7 MR. ROTH: Yes, sir.

8 THE COURT: Just for my benefit, the
9 lawyers can tell me, Ms. Moran is employee
10 of --

11 MR. MANCERI: Tescher & Spallina, P.A.

12 THE COURT: I remember that. I've got it.
13 So it sounds like, Mr. Pratt, I think probably
14 from an orderly fashion, since I reserved this
15 time for you to raise on behalf of your client
16 some irregularities that we spoke about, I
17 think you're up.

18 MR. MANCERI: Your Honor, if I might, just
19 to refresh your memory, we had filed a motion
20 to reopen the estate. Tescher & Spallina had
21 filed a motion to reopen. Mr. Eliot Bernstein
22 was on here on his emergency motion that was
23 denied; that's what he filed.

24 THE COURT: I said there was no -- so the
25 order I have is the order on the emergency

1 motion to freeze assets. I said there's no
2 emergency.

3 MR. MANCERI: Correct.

4 THE COURT: But I announced what the
5 purpose of the hearing was.

6 MR. MANCERI: Yes. You did. It's embodied
7 of the order, Your Honor.

8 THE COURT: So you want to go forward to
9 address irregularities in the pleadings that
10 Eliot says exist.

11 MR. MANCERI: I believe that's the way we
12 left it.

13 MR. PRATT: Your Honor, I disagree in that
14 he filed a motion to reopen the estate, an
15 agreed order --

16 THE COURT: I reopened it. That's not an
17 issue. So whose pleadings are filed that are
18 challenging the propriety of the pleadings?

19 MR. MANCERI: That would be Mr. Bernstein.
20 He filed it, but he filed it as part of the
21 emergency motion.

22 THE COURT: I understand. I'm not
23 hearing -- I'm not sure what you're getting at
24 Mr. Manceri, so what is it that you're seeking
25 to do?

1 MR. MANCERI: I'm just addressing the order
2 Judge, that you announced, that's all I'm
3 addressing.

4 THE COURT: Paragraph three of the
5 September 24th order, it says the purpose of
6 today's hearing is to address any alleged
7 impropriety or defect in the form of the
8 pleadings or other documents submitted to the
9 court in furtherance of the closing of the
10 Estate of Shirley Bernstein.

11 MR. MANCERI: That's correct, Your Honor.

12 THE COURT: The person who filed the
13 request to, or who raised an allegation of
14 impropriety, was who?

15 MR. MANCERI: Actually, it's my position
16 that Mr. Tescher or Mr. Spallina raised it
17 voluntarily in their petition to reopen.
18 While you did reopen it, they were the one's
19 who actually brought the issue forward.

20 THE COURT: But I see their August 28th
21 motion, I reopened the estate, so they said
22 that they thought they wanted to give, using
23 their words, persons the opportunity to cure
24 the irregularities. Someone needs to formally
25 identify the irregularities, unless you

1 stipulate what those are.

2 MR. MANCERI: There's no written
3 stipulation as to that.

4 THE COURT: So to do this in an orderly
5 way, which is all I'm getting at, you think
6 that you -- if I let you go first on your
7 side, Mr. Manceri, what irregularities, if
8 any, are you going to point out took place?

9 MR. MANCERI: We're going to point out,
10 take you through the issue of the submittance
11 of the original waivers which were returned by
12 the clerk, because of your method of doing
13 that, that required notarization, and then
14 take you through the affirmation of those
15 original waivers with current affidavits from
16 the beneficiary reaffirming that they, in
17 fact, acknowledge the original waivers which
18 were not notarized with current addresses,
19 with original affidavits attached to them, and
20 we would walk the Court through that exercise.

21 THE COURT: Stop there. What do you want
22 to tell me, Mr. Pratt, as to why you should go
23 first?

24 MR. PRATT: I think that whole thing was
25 brought about by the fact that my client,

1 Eliot Bernstein, in fact filed the emergency
2 motion. As far --

3 THE COURT: That gets your nowhere. So
4 we're long passed that point.

5 MR. PRATT: Number two, that they were
6 seeking to reopen the estate. The estate was
7 already reopened, and I don't know why they
8 would be challenging the documents that they
9 used to close the estate, but for Mr.
10 Bernstein here filing his emergency motion in
11 which although it was titled emergency, it
12 bought up all of these issues that we're
13 currently here before this Court. It was only
14 after he filed the motion in which he was
15 contesting the validity of the waivers that
16 this Court -- that they ended up filing their
17 motion to reopen the estate. I wasn't --

18 THE COURT: So what benefit is there to
19 this process for you to go first? Both sides
20 are going to go. We're only talking about
21 who's going first.

22 MR. PRATT: First off, he's the petitioner.
23 I don't know that they're going to necessarily
24 address all of the issues that we're going to
25 bring up.

1 THE COURT: So listen carefully. Mr. Pratt
2 goes first.

3 MR. MANCERI: Yes, sir.

4 THE COURT: That way we can move along. Go
5 ahead.

6 MR. PRATT: All right. I just brought some
7 legal authority here that I'd like to point
8 out. May I approach, Your Honor?

9 THE COURT: Sure. I'll look at that at the
10 right time.

11 MR. PRATT: I'm going to give a brief
12 opening statement before I call my first
13 witness, just to give an overview of why we
14 want the estate, I guess, to remain open,
15 rather than being closed. I'm kind of a
16 latecomer to the case, but I realize that's
17 kind of the issue here.

18 THE COURT: That would be helpful. Tell me
19 what the issue is; that's true.

20 MR. PRATT: This issue is, as far I
21 understand it, whether or not the estate will
22 remain open. Although there was an order that
23 reopened the estate, my understanding
24 essentially is the personal representative
25 essentially wants at this hearing to re-close

1 the estate.

2 THE COURT: Based upon the most recent
3 waivers of accountings, petition for
4 discharge, and the pleadings filed October
5 23rd; is that correct?

6 MR. MANCERI: It's not exactly correct,
7 Your Honor. We have no petition for discharge
8 filed at the moment. The order specifically
9 addresses what you're going to hear today, we
10 had this whole thrust in parity if you
11 remember at the end of the last hearing with
12 Mr. Bernstein who was without counsel at the
13 time, that's why the order pursuant to your
14 ruling is crafted the way it's crafted. It's
15 a limited issue. You told Mr. Bernstein we're
16 not going to be discussing the Shirley
17 Bernstein Trust and all the distributions. We
18 went through this whole anemic experience.
19 You went through that whole thing.

20 THE COURT: So the issue is, is the estate
21 going to remain open, or be closed, but
22 there's no petition for discharge to close it,
23 I'm told.

24 MR. PRATT: Or essentially address the
25 validity of the waivers. If all of the

1 beneficiaries have signed off on it, and we
2 contend that they haven't, it would be a
3 foregone conclusion that the estate would then
4 be closed.

5 THE COURT: So who are the beneficiaries
6 that have to sign off?

7 MR. PRATT: Well, I mean that's one of the
8 issues, because --

9 THE COURT: From your point of view, who
10 are the beneficiaries?

11 MR. PRATT: Our point of view is the
12 beneficiaries that need to sign off would be
13 one of the decedents, essentially.

14 THE COURT: Who?

15 MR. ATTY: One of the decedents, Simon
16 Bernstein, and then also potentially Eliot,
17 three of Simon and Shirley's children, Eliot,
18 Lisa and Jill, and if they contend there was
19 a --

20 THE COURT: Just who do you say that -- who
21 are the people that need to sign off? Simon,
22 Eliot, Lisa, Jill.

23 MR. PRATT: Yea. If they contend there was
24 a valid power of appointment executed before
25 the estate was closed, then there would be a

1 total of six grandchildren that would have to
2 sign the waivers in some sort of capacity. If
3 they were minors, then they would have to have
4 that parents sign waivers, that sort of
5 capacity, or an administrator ad litem.

6 THE COURT: Okay. Go ahead.

7 MR. PRATT: There is also some issue
8 whether or not the power of appointment
9 expanded to include for additional
10 grandchildren. Some of those grandchildren
11 are over the age of 18, and if they contend
12 that there was a power of appointment that was
13 validly executed, which I believe that's the
14 position they're taking, that would also
15 include waivers by four additional
16 grandchildren, Eric, Michael, Eliot, and
17 Molly, and there would have been no documents
18 or waivers signed by any grandchildren, that
19 have been filed in this case.

20 And as far as that's concerned, Eliot's
21 waiver was invalidly executed. The reasons
22 why it was essentially, as shown in the
23 Sustrassen case, there has to be an
24 intentional relinquishment of the right. The
25 evidence that we're going to present is going

1 to show that he signed the waiver, but in
2 conjunction with him signing the waiver he was
3 always under the impression he would still get
4 financial information associated with the
5 estate. They sent him the waiver without any
6 financial information. He sent it back. He
7 sent it along with an e-mail saying, I'm still
8 going to get all this financial information.
9 There's a series of e-mail's spanning
10 throughout the next year, e-mail's and letters
11 from Mr. Bernstein's prior counsel, in which
12 he requested the information. And then as far
13 as Eliot Bernstein's waiver is concerned, this
14 court should not consider that to be valid.

15 Also, many of the waivers have been
16 forged. I think the Court might recall from
17 the last hearing there was a series of waivers
18 that had been forged, that occurred after the
19 prior personal representative had, in fact,
20 died, and so that's another impropriety that
21 we are going to present evidence on.

22 THE COURT: Okay. Then so if I find that
23 Eliot's waiver was invalidated, you want the
24 estate to remain open.

25 MR. PRATT: Exactly.

1 THE COURT: And then do what?

2 MR. PRATT: We want to receive the
3 financial information that he's been
4 requesting since the estate was opened. He
5 didn't even find out he was a beneficiary
6 until the time he received the waiver, and
7 essentially we want to receive financial
8 information and want a proper estate
9 accounting, and if everything is as they say
10 it is, then the estate will be closed after
11 the production of various documents and a
12 final accounting if we need to have a final
13 accounting.

14 THE COURT: So if you prove that there were
15 prior waivers that had been forged, what does
16 that do?

17 MR. PRATT: Well, as far as the forgery
18 goes, those are going to be invalid.

19 THE COURT: I'm told now that those same
20 individuals, and Mr. Manceri correct me if I'm
21 wrong, have now filled out and sent in new
22 waivers.

23 MR. MANCERI: Not only that, Judge, they
24 have already been filed.

25 THE COURT: That's what I mean; otherwise,

1 I would not have them in the file.

2 MR. PRATT: Yea. As far as those waivers
3 go, that's fine except for two important
4 points. One is that Simon Bernstein's waiver,
5 which was one of them that was forged, he's
6 deceased, so obviously he could not have
7 signed that waiver, so without some waiver or
8 something from the personal representative of
9 his estate, it wouldn't be able to close, and
10 then in addition to that although there are
11 several children that have reaffirmed their
12 waivers, it would not apply to all of the
13 grandchildren who don't have any waivers on
14 file.

15 THE COURT: So let's put aside for a moment
16 that Eliot's saying I don't want my waiver
17 recognized, I want financial information, I
18 may want an accounting, and see what goes from
19 there, you only represent him, Eliot; correct?

20 MR. PRATT: That's right.

21 THE COURT: Is Simon represented here, or
22 anyone, since Simon's deceased, anyone on his
23 behalf here for him?

24 MR. PRATT: There was an order that
25 appointed Ted as the personal representative

1 of his estate when it was reopened.

2 THE COURT: Is he, Ted Bernstein, PR of
3 Simon Bernstein, complaining about any aspect
4 of Shirley Bernstein's estate, including your
5 position that his, Simon's wavier may have
6 been improper?

7 MR. PRATT: I'm unaware of any complaints
8 he made. We questioned whether or not he has
9 a conflict of interest, whether or not he is a
10 co-defendant, in which they then allege that
11 millions of dollars have been taken, and there
12 is an association with the estate, and we
13 think there is a conflict with his estate in
14 the sense that Ted may have absconded with
15 millions of dollars without Sy's knowledge,
16 and therefore they may have a conflict of
17 interest in that respect.

18 THE COURT: I would deal with that in
19 something filed in Simon's estate. We're
20 limited only to Shirley's estate here.

21 MR. PRATT: Yes.

22 THE COURT: And the fact that the other
23 individuals who supposedly had their waivers
24 executed improperly, who now may have tried to
25 cure them, they're not seeking any further

1 relief from Shirley's estate; is that true?

2 MR. PRATT: I believe Eliot is the only one
3 who is seeking to have documents produced and
4 have a financial accounting issued.

5 THE COURT: So from a practical point of
6 view, which we always have to keep our eye on
7 the ball, is there any reason -- I know from
8 the last hearing that there was a lot about
9 the alleged impropriety of the prior waivers,
10 but now that you have summarized the issues as
11 you have, is there any reason why, today, I
12 would go beyond, now that I have opened
13 Shirley's estate and I am entering an order
14 dealing with Shirley's estate, I wouldn't
15 focus in on the issue whether Eliot has waived
16 as a beneficiary whatever rights purportedly
17 he had waived, and if I say no waiver, what to
18 do about it. Is that the only area that Eliot
19 could get some relief from?

20 MR. PRATT: That and whether or not this
21 court believes that the grandchildren would
22 have also had to sign waivers in order to have
23 the estate closed.

24 THE COURT: The grand children of who?

25 MR. PRATT: The grandchildren of Shirley

1 Bernstein's estate.

2 THE COURT: But her children, the parents
3 of those grandchildren are the one's who
4 signed the waivers?

5 MR. PRATT: Yea. But they signed
6 essentially, and there was no statement in
7 there that they were signing on behalf of
8 their children. And in addition, there's a
9 contention that some of the grandchildren are
10 beyond the age of 18, so it would not be any
11 sort of natural guardianship that would occur.

12 THE COURT: So what's Eliot's standing to
13 deal with that?

14 MR. PRATT: What's his standing to deal
15 with that? The alleged --

16 THE COURT: The alleged issue that
17 grandchildren may or may not be participating
18 in this proceeding.

19 MR. PRATT: As far as whether or not the
20 estate was properly closed or not.

21 THE COURT: Even though he may have no
22 financial interest in where that issue may go?

23 MR. PRATT: He does have a financial
24 interest in it.

25 THE COURT: How is that an interest?

1 MR. PRATT: Because that would change the
2 way the estate was distributed.

3 THE COURT: Okay. How?

4 MR. PRATT: Shirley's will devises her
5 assets to three of her five children. It
6 actually devises it to a trust, which provides
7 for her husband, which ultimately is supposed
8 to go to three of her five children. There
9 was a power of appointment in association with
10 one or more of those trusts that gave her
11 husband, Simon, the ability to potentially
12 change the beneficiaries, but it was a limited
13 power of appointment, and I think a question
14 exists of, one, whether that document was
15 validly executed or not, and two, did that
16 document go above and beyond what was required
17 or what was allowed, because there's a
18 definition section underneath Shirley's trust
19 that says she defines her children as Eliot,
20 Lisa, and Jill, and specifically says for
21 purposes of this trust Ted and Pam shall be
22 treated as predeceased, and all their children
23 should be treated as predeceased. So if there
24 is a determination or some sort of
25 distribution in which now they're telling

1 Eliot that he is a beneficiary, and now all
2 the sudden he isn't a beneficiary of the
3 estate --

4 THE COURT: You already made your point.
5 We will deal with whether Eliot is a
6 beneficiary, whether he's had a valid wavier,
7 I've got that part down, but the question is
8 are there any other issues I need to deal with
9 today.

10 MR. PRATT: That I think is the primary
11 issue, but also the issue of whether certain
12 people are considered beneficiaries of the
13 estate.

14 THE COURT: For Eliot to raise that, he has
15 to be an interested person in the outcome of
16 that proceeding.

17 MR. PRATT: He is.

18 THE COURT: How is he affected by whether
19 the grandchildren are deemed to be
20 beneficiaries or not?

21 MR. PRATT: Because if -- it's kind of a
22 two-stage analysis. If the grandchildren
23 aren't beneficiaries, then he is not a
24 beneficiary. Then the second phase of that is
25 whether or not if the power of appointment was

1 validly executed, then the question becomes
2 are his children entitled to half of the
3 estate, or are they entitled to three-tenths
4 of the estate.

5 THE COURT: Okay. Tell me what the will
6 says.

7 MR. PRATT: The will devices everything to
8 a trust.

9 THE COURT: So they disagree with that.
10 The will should say what it says, there
11 shouldn't be too much dispute about that. Are
12 you comfortable you know what it says, because
13 as soon as you said that --

14 MR. PRATT: I welcome to hear their
15 interpretation.

16 THE COURT: Mr. Manceri, discipline
17 yourself right now and only tell me that you
18 can participate if you can answer my
19 questions. I don't want advocacy now. Tell
20 me what the will says.

21 MR. MANCERI: The will says that all the
22 tangible personal property goes to Simon, who
23 survived his wife, Shirley, and the residue
24 goes into what's known as an existing trust,
25 trust which we will call the Shirley Bernstein

1 Trust for purposes of the hearing.

2 MR. PRATT: I agree with that.

3 THE COURT: So at the end of the day of
4 this estate litigation is there a contest that
5 that's the provisions of the will? You said
6 that you agree.

7 MR. PRATT: Yes.

8 THE COURT: So whatever Shirley had
9 available to devise personalty to Simon, who's
10 deceased and we can maybe deal with that in
11 his estate, everything else to Shirley's
12 trust.

13 MR. PRATT: Yes.

14 THE COURT: So this order limited us to
15 Shirley's estate, not to her trust. We were
16 pretty clear. Maybe I'm just confused.

17 MR. PRATT: That's the financial. The
18 analysis goes a little bit deeper than that,
19 because --

20 THE COURT: If Shirley's assets, other than
21 the personalty goes to her trust, none of the
22 children are the beneficiaries, or
23 grandchildren are the beneficiaries under
24 Shirley's will. Her trust is; correct?

25 MR. PRATT: That's right, but --

1 THE COURT: Once the trust receives
2 whatever assets there are, the provisions of
3 the trust will rise and fall on who gets what;
4 is that true, or not?

5 MR. PRATT: Pretty much.

6 THE COURT: So his waiver, going back, was
7 the waiver a waiver that said to Eliot waive
8 whatever interest you may have in Shirley's
9 estate?

10 MR. PRATT: No. It was just a waiver of a
11 financial accounting and service of a petition
12 for discharge, just the normal estate closing
13 waiver. That's all it was.

14 THE COURT: It sounds like though that on
15 the estate level of Shirley this is really a
16 simple matter. Is there something that I'm
17 missing, on the estate level? You know, I
18 mean one thing we learned here is we pick the
19 manner in which we do our battles. It sounds
20 like on the estate level Shirley's probate
21 estate is simple. Simon gets her personalty,
22 and her trust gets everything else. What
23 could be more simple than that?

24 MR. PRATT: I would agree that it is
25 simple.

1 THE COURT: Okay. So you may have some
2 litigation, some action pending in her trust
3 case. Is there?

4 MR. PRATT: There is no trust case, right
5 now, and I just want to point out a couple of
6 things as far as the trust code is concerned,
7 and these are some of the statutes and court
8 rules that I've handed you. Florida probate
9 5.240 basically says, if you have a situation
10 where the personal representative of an estate
11 is the same, it says a pour over will type of
12 situation pours all the assets into the trust,
13 and that trustee is the same, the qualified
14 beneficiaries of the trust are considered
15 interested parties for the estate proceedings.

16 THE COURT: Let's assume I make everybody
17 interested, you're still telling me that the
18 command of the estate is --

19 MR. PRATT: We just want to know.

20 THE COURT: -- to pour over everything to
21 the trust. Let me read between the lines
22 here. I don't know what the trust says. I'm
23 not asking about that. Is the issue whether
24 the PR of the estate -- and who's the PR, Ted?

25 MR. PRATT: Yes. Currently.

1 THE COURT: Whether he is carrying out
2 Shirley's mandate by transferring all of
3 Shirley's assets to the trust; is that an
4 issue?

5 MR. PRATT: I think that's it. We want to
6 know how much was in her estate, and we want
7 simple information related to the estate
8 administration. The estate inventory said
9 there was \$25,000. Eliot Bernstein believes
10 they were worth millions of dollars, and there
11 could have been assets entitled to the trust,
12 but this is part of a bigger picture. We want
13 to see what happened in the estate, so that we
14 can make sure everything got properly
15 transferred over to the trust.

16 THE COURT: Tell me what the provisions of
17 the trust say. Do you know?

18 MR. PRATT: I know what the provisions of
19 the trust say. Essentially there is a trust
20 that provides for the benefit of her husband
21 while he is alive, and then upon her death the
22 assets are supposed to be distributed to three
23 of her five children.

24 THE COURT: Who?

25 MR. PRATT: Eliot, Lisa, and Jill. Now,

1 there was also a power of appointment that
2 was -- I guess the trust also contained
3 provisions that said for the purposes of the
4 trust two of her five children, Ted and Pam,
5 should be treated as predeceased. And then
6 there is a power of appointment that's named
7 in Simon's will that says I want to appoint
8 all of this money to all of his grandchildren,
9 which is a little bit different from the
10 provisions that were in Shirley's document.

11 THE COURT: So I'm just lost in one area,
12 because you mentioned Simon's will, so how
13 does Simon's will get involved?

14 MR. PRATT: Simon's will gets involved
15 because Shirley gave him a power of
16 appointment, a limited power of appointment,
17 to change the beneficiaries.

18 THE COURT: In the trust.

19 MR. PRATT: Exactly.

20 THE COURT: So Simon during his lifetime
21 could or not execute the power of appointment.

22 MR. PRATT: Exactly.

23 THE COURT: Did he?

24 MR. PRATT: There is a power of appointment
25 that exists in his will.

1 THE COURT: But you can exercise a power of
2 appointment in a will, so when he dies, as
3 part of his will he's saying here's how I want
4 to exercise the power of appointment that
5 Shirley gave me.

6 MR. PRATT: Yes.

7 THE COURT: That only manifests itself
8 because he survived her. What does he do with
9 that power of appointment.

10 MR. PRATT: As far as we understand, he
11 attempts to name -- he says it goes to all my
12 grandchildren, so there's 10 of them.

13 THE COURT: So bypassing, Eliot, Lisa, and
14 Jill.

15 MR. PRATT: And Ted and Pam.

16 THE COURT: Ted and Pam already out. So
17 the five children are out, and the 10
18 grandchildren are in.

19 MR. PRATT: Exactly. There's a question
20 whether that power of appointment was used
21 more broadly than was given to him.

22 THE COURT: So in what case does that get
23 litigated?

24 MR. PRATT: That would not be in this case.
25 That would have to be in a case involving his

1 estate, or likely his trust, or maybe a case
2 that was against his trust and then put into
3 his estate. We don't even know if that
4 happened.

5 THE COURT: So let's get back to Shirley's
6 estate.

7 MR. PRATT: Yes.

8 THE COURT: So it sounds like Eliot may be,
9 either him or his children if the power of
10 appointment was executed, a beneficiary of
11 Shirley's trust. I'm working backwards. So
12 he wants to get information to make sure that
13 what Shirley owned at the time, or had an
14 ownership interest in at the time of her death
15 was transferred properly through her will and
16 poured over into her trust; is that what he
17 wants?

18 MR. PRATT: Yes.

19 THE COURT: Is that something that he is
20 legally entitled to?

21 MR. MANCERI: Your Honor, it's our
22 contention he is not legally entitled to it,
23 because he did a full waiver of every interest
24 in the estate.

25 THE COURT: But for the waiver, he wouldn't

1 be interested. Would he be allowed to that
2 information?

3 MR. MANCERI: His children would
4 technically be interested. None of the
5 children are beneficiaries, as you correctly
6 stated, Your Honor.

7 THE COURT: The trust is the beneficiary.
8 You mean of the trust.

9 MR. MANCERI: That's correct.

10 THE COURT: Because a power of appointment
11 was executed.

12 MR. MANCERI: Right. By Simon to all the
13 grandchildren.

14 THE COURT: But I'm trying to get passed
15 some of the things that have to be ultimately
16 litigated in some other forum. Are we down to
17 whether the waiver was validly executed or
18 not?

19 MR. MANCERI: I think that's the bulk of
20 it, certainly, Your Honor, yes, whether the
21 waiver was validly executed.

22 THE COURT: If the waiver was not validly
23 executed, what Mr. Pratt is saying is he wants
24 financial information that may include an
25 accounting so he can determine, he, Eliot,

1 that what Ted as PR transferred over from
2 Shirley's estate poured over into her trust is
3 what should have gone.

4 MR. MANCERI: An accounting of the probate
5 estate he's talking about.

6 THE COURT: The probate estate.

7 MR. MANCERI: Right. I think he can
8 theoretically arguably ask for that, Your
9 Honor, on behalf of his children.

10 THE COURT: I know you attacked the waiver,
11 and you say it was valid. He says it's not.
12 What's the harm by giving him the information,
13 the financial disclosure of what Shirley's
14 estate poured over into the trust.

15 MR. MANCERI: Simply, Your Honor, that he
16 signed the waiver and we think this is all
17 done and behind us. If he wants to proceed
18 about a trust accounting he could get that
19 same information in the trust arena by asking
20 on the receipt side.

21 THE COURT: Every time this happens in a
22 trust case everyone says there's some bar, but
23 you didn't ask for it or get it in the estate
24 case. That's the experience I get when that
25 happens.

1 MR. MANCERI: We would certainly like --

2 THE COURT: So in Shirley's estate, was
3 there an inventory done?

4 MR. MANCERI: I presume there is.

5 MR. PRATT: There was.

6 MR. MANCERI: You can tell you, Your Honor,
7 I want to clarify, and you asked me not to be
8 an advocate, but there are a couple of facts I
9 want to clear up. The co-personal
10 representatives of Simon's estate are Mr.
11 Spallina and Mr. Tescher, not Ted Bernstein.
12 Judge French has Simon Bernstein's estate, in
13 case you weren't aware of that.

14 THE COURT: Okay.

15 MR. MANCERI: To go back --

16 THE COURT: I'm happy. That's good. Let
17 someone else do it.

18 MR. MANCERI: We brought that up at the
19 last hearing, but I don't know if you recall
20 that or not, Judge. We would like to address
21 the waiver. Yes, there was an accounting
22 done. I don't know if we have the inventory.
23 It certainly would be in the file if it was
24 done. I don't have a copy handy.

25 THE COURT: Even if he did a waiver, I can

1 still give him the inventory. I can open it.
2 I can get it to him.

3 MR. PRATT: We have the inventory.

4 MR. MANCERI: They have the inventory.

5 MR. PRATT: We received the inventory after
6 the estate was closed.

7 THE COURT: You got the inventory. Was
8 there an accounting in the estate of Shirley
9 Bernstein?

10 MR. MANCERI: If it was waived, Your Honor,
11 that's the point.

12 THE COURT: All right. So what are the
13 other financial documents other than the
14 inventory that Eliot wants, Mr Pratt?

15 MR. MANCERI: Judge, if I might, the
16 inventory listed \$25,000 of tangible personal
17 property, which all went to Mr. Bernstein as
18 surviving spouse.

19 THE COURT: Okay. And that's it.

20 MR. MANCERI: That's it.

21 THE COURT: So according to the inventory
22 there were no assets poured over from
23 Shirley's estate into the trust.

24 MR. MANCERI: It was all funded pre-death.
25 That's my understanding, Your Honor.

1 MR. PRATT: I mean, we don't have any
2 documents to support that verification. We
3 don't know how the attorneys have been paid,
4 and we don't have any verification they were
5 the only assets that were in there. Plus --

6 THE COURT: The inventory is a verified
7 document.

8 MR. PRATT: Right.

9 THE COURT: So that's -- so you have an
10 inventory that says personalty only, and I
11 could look it up. It's sealed. I can get it,
12 but you have it already. If that's what it
13 says, then Ted as PR is saying that's what I
14 turned over as PR, and so Simon got the
15 personalty.

16 MR. MANCERI: Simon was the PR at that
17 time, Your Honor.

18 THE COURT: He took it, that's right,
19 because Ted got appointed when Simon died, and
20 then nothing then is passing through the will,
21 and Mr. Manceri just said to the extent to
22 which Shirley's trust may have assets, it was
23 funded pre-death, which happens, and there is
24 no document in the estate that's going to
25 verify that.

1 MR. PRATT: I mean if that's truly the
2 case, then why not just produce an accounting?

3 THE COURT: He's saying that's the case.
4 Other than the lawyers saying that, I don't
5 know. He's saying that was done, but more
6 importantly Mr. Eliot can maybe do whatever
7 he wants to do in the trust case to see what
8 went into the trust, and that would be what
9 Mr. Manceri is describing as the pre-death
10 funding. But for purposes of Shirley's estate
11 trying to put things in a step-by-step
12 process, if her will says what it said, the
13 inventory says no assets other than personalty
14 of Shirley that went to Simon -- I mean, I'm
15 here to determine should the estate be closed
16 and then go to Judge French, have a good time.
17 What else is there really to accomplish, even
18 though we may have had a problem with the
19 waivers, I understand that, but now they've
20 reaffirmed them, so to -- I mean to spank
21 somebody that may deserve to get spanked for
22 doing something wrong, how does that put
23 dollars, or benefits, in Eliot's pocket?

24 MR. PRATT: I guess part of it is the fact
25 that there hadn't been really any information

1 provided all along. He never really got any
2 information until the estate was actually
3 closed, so I mean that's part of his reasoning
4 for wanting to reopen the estate and get the
5 financial information. I think --

6 THE COURT: The answer is none. There is
7 no estate, they're representing. I can put
8 Ted under oath let you question him, but the
9 issue is, which I'll do, whether there are any
10 assets other than what's reflected on the
11 inventory, and he'll say, I assume, based on
12 what Mr. Manceri just told me, he'll say no.
13 And so you can't produce financial documents
14 on things that don't exist to the matter that
15 we're speaking about.

16 MR. PRATT: I agree, but there could be an
17 accounting that was produced.

18 THE COURT: You're not going to produce an
19 accounting of nothing, and the purpose of an
20 accounting is to get some verification that
21 what was processed through the PR's hands is
22 accurate. He'll testify in a moment just what
23 Mr. Manceri probably told us, that the answer
24 is nothing.

25 MR. PRATT: Okay.

1 THE COURT: So how does that --

2 MR. PRATT: I agree if what their
3 representations are true it's possible we
4 could receive some financial information.

5 THE COURT: Other than -- I mean, you got
6 the inventory. That shows basically that
7 there are no estate assets other than
8 personalty, which I assume is not an issue
9 here. So today I'm not going to have them
10 draw up an accounting that says nothing,
11 because that doesn't do any good. Do you
12 agree? Who's that going to benefit if he goes
13 through the process of actually filing an
14 accounting that says what the inventory says,
15 personalty and nothing else.

16 MR. PRATT: Can we take a short break?

17 THE COURT: Absolutely. Sure. Go ahead.

18 (Thereupon, a short recess was taken.)

19 THE COURT: What did he say?

20 MR. PRATT: Your Honor, my client questions
21 the accuracy of the inventory and would like
22 the ability to utilize the estate proceedings
23 to verify it's accuracy.

24 THE COURT: Well, I appreciate that he
25 challenges that, but you haven't told me what

1 basis he challenges that on.

2 MR. PRATT: Well, by virtue of the fact he
3 believes his mother and father were worth
4 millions and millions of dollars, yet the
5 inventory of the estate contains only for
6 \$25,000.

7 THE COURT: But we heard Mr. Manceri tell
8 us that Shirley transferred, during her
9 lifetime, assets to her trust. You heard that
10 as well. Plus, I know nothing about what
11 Simon did with his estate, and Simon, he may
12 have owned assets jointly and passed outside
13 the estate. So the inventory is a narrow
14 window of just that which passes through.
15 There are people, and I'll say this to Eliot,
16 we deal with this all the time, people
17 sometimes are super rich and they don't even
18 have a probate estate, because everything is
19 titled jointly, or they fund the trust in
20 advance, and there is no probate. People
21 don't like to have probate. So that very well
22 is what happened, but I'm willing to at least
23 start. I want you to put on your client and
24 take some testimony, because we had accuracy
25 issues, Mr. Manceri, on the accuracy of the

1 inventory, and then to state on the record
2 what he knows about, that he's done a search
3 for other assets but personalty, and there's
4 nothing else that Shirley had in her probate
5 estate to be poured over into her trust. That
6 is what you were told.

7 MR. MANCERI: Your Honor, I like to put on
8 two people.

9 THE COURT: You might want that, but I tell
10 you what I want. I want the PR to do that
11 first, and then we see.

12 MR. MANCERI: Judge, I wasn't prepared to
13 address the inventory. I don't have a copy of
14 the inventory at my disposal. If anybody has
15 a copy, I'll be glad to use that. Just to be
16 clear, Ted was not the PR at the time this
17 inventory was filed.

18 THE COURT: But he's in charge of the
19 estate once he takes it over.

20 MR. MANCERI: He just got appointed a
21 couple of weeks ago, but yes.

22 THE COURT: He'll address it, otherwise I
23 have to give him more time to do his work and
24 not close the estate. You want the estate
25 closed; right?

1 MR. MANCERI: We want to address what the
2 court order said. We don't have a petition of
3 discharge filed.

4 THE COURT: You want to file one to close
5 the estate.

6 MR. MANCERI: Eventually, yes.

7 THE COURT: Come on up Ted.

8 MR. MANCERI: Mr. Bernstein, please.

9 Judge, I'm still waiting for the inventory.

10 THE COURT: He'll give it to you. Do you
11 have it? I mean, I have it. Do you have it
12 Mr. Pratt?

13 MR. PRATT: I don't think so.

14 (A brief pause.)

15 THE COURT: Hold on. I'll get you a copy.

16 (A brief pause.)

17 THE COURT: I have a question, Mr. Manceri.
18 I want to make sure of one thing, the
19 inventory was signed by Simon on August 29,
20 2011. When did he die?

21 MR. MANCERI: Simon died a little more than
22 a year ago.

23 THE COURT: He was alive then.

24 MR. MANCERI: Yes, sir.

25 THE COURT: All right.

1 MR. MANCERI: I think September, 2012 he
2 died --

3 THE COURT: All right.

4 MR. MANCERI: -- if my memory serves me
5 correctly. And Mrs. Bernstein died the prior
6 December. 2010, forgive me.

7 THE COURT: There is a petition for
8 discharge on file.

9 MR. MANCERI: That's the original petition.
10 That was probably for Simon. Now we have to
11 do one for Ted, Your Honor.

12 THE COURT: All right.

13 Whereupon Mr. Ted Bernstein was sworn in by
14 The Court.)

15 DIRECT EXAMINATION

16 BY MR. MANCERI:

17 Q. State your name for the record, please.

18 A. Ted Bernstein.

19 Q. Mr. Bernstein, are you one of the children of
20 Shirley and Simon Bernstein?

21 A. Yes. I am.

22 Q. Do you have any siblings?

23 A. Yes. I do.

24 Q. What are their names?

25 A. Pam, Simon, Eliot Bernstein, Jill and Lisa.

1 Q. Are you aware of the fact that your father,
2 Simon, was the named personal representative of your
3 mother, Shirley's estate?

4 A. I am, yes.

5 Q. Did you have hands-on working participation as
6 far as the administration of your mother's estate, with
7 your father?

8 A. Did not.

9 Q. I'm going to show you a document which the court
10 bailiff has given us, which is entitled, "Inventory."
11 Are you familiar with your father's signature?

12 A. I am.

13 Q. Take a look at this document on page two, and
14 tell me if that's your father's signature, to the best
15 of your knowledge.

16 A. Yes. It is.

17 Q. Are you familiar with a gentleman named Robert
18 Spallina?

19 A. Yes.

20 Q. How do you know that name, and how is it familiar
21 to you?

22 A. He is the personal representative of my father's
23 estate.

24 Q. Do you know whether or not he was one of the
25 attorneys that handled the administration of your

1 mother's estate?

2 A. I believe he was, yes.

3 Q. This inventory reflects, and these are assets
4 that would be in your mother's individual name, not in
5 her trust, not in her joint name, not with a beneficiary
6 named on them, of an estimated value of \$25,000
7 described as furniture, furnishings, household goods and
8 personal effects, do you see that?

9 A. I see that.

10 Q. Do you have any personal knowledge as to the
11 accuracy of the information here as signed under
12 penalties of perjury by your father?

13 A. I think that my personal knowledge is that would
14 be accurate.

15 Q. Do you have any information of your personal
16 knowledge that you acquired or knew about from the time
17 prior to you becoming appointed personal representative
18 of your mother's estate, or since you became personal
19 representative of your mother's estate, that would
20 materially change this \$25,000 figure?

21 A. I do not.

22 MR. MANCERI: I don't have any further
23 questions, Your Honor.

24 THE COURT: Mr. Pratt.

25

1 CROSS EXAMINATION

2 BY MR. PRATT:

3 Q. You didn't prepare this inventory; did you?

4 A. I did not.

5 Q. You weren't involved in the preparation, at all?

6 A. I was not.

7 Q. Do you have -- you were only appointed as --
8 strike that. Have you even been appointed as personal
9 representative of your mother's estate yet?

10 A. Of my mother's estate?

11 Q. Yes.

12 A. I believe that I have.

13 Q. Do you know if the letters of administration have
14 actually been issued?

15 A. I do not know that.

16 Q. You haven't seen any letters of administration?

17 A. I'm not sure right now.

18 Q. Since your appointment, or there was an order
19 that was entered, what efforts have you made to
20 determine the value of your mother's estate?

21 A. Of my mother's estate?

22 Q. Exactly.

23 A. I have not done that.

24 Q. On what basis, if you haven't done any
25 investigation yourself, why would you say that this

1 \$25,000 estimate of the value of the estate is accurate?

2 A. Well, upon my father's death I had to have the
3 assets of the estate inventory that was done, so that
4 was the combination of my mother's estate and my
5 father's, at the time of his death. So based on that
6 valuation at that time, that number was within reason of
7 this number, so I think that we're talking within
8 generalities the numbers are approximates and were
9 pretty close to the numbers that were stated here.

10 Q. You're not serving as personal representative of
11 your father's estate; are you?

12 A. I am not.

13 Q. You're just talking about the \$25,000 value of
14 the household furnishings, and not whether or not
15 there's any other assets out there; is that right?

16 A. That's correct.

17 THE COURT: He was appointed September 24th
18 by the way.

19 MR. PRATT: Okay.

20 THE COURT: 2013.

21 MR. PRATT: I have no further questions.

22 THE COURT: You can step down.

23 THE WITNESS: Thanks.

24 THE COURT: You said you want to call
25 another witness?

1 MR. MANCERI: I like to call Mr. Spallina,
2 Your Honor.

3 THE COURT: Come up.

4 (Whereupon Mr. Spallina was sworn in by the
5 Court.)

6 DIRECT EXAMINATION

7 BY MR. MANCERI:

8 Q. Mr. Spallina, good afternoon. As you heard,
9 we've been asking questions about this inventory; are
10 you familiar with this document?

11 A. Yes. I am.

12 Q. Tell the Court how you're familiar with it.

13 A. This was the inventory that we filed in the
14 Shirley Bernstein estate, Your Honor.

15 Q. Were you one of the attorneys that represented
16 Simon as personal representative of the Estate of
17 Shirley Bernstein?

18 A. Yes. I was.

19 Q. And did you work with Simon Bernstein on creating
20 this inventory to be filed in the probate court?

21 A. Yes. I did.

22 Q. All right. Did you meet and speak with Simon in
23 furtherance of the preparation of this document?

24 A. Yes. We did.

25 Q. And that inventory reflects an estimated value of

1 \$25,000 comprised of furniture, furnishings, household
2 goods, and personal effects, do you see that?

3 A. Yes.

4 Q. Based on your dealings with Simon Bernstein, do
5 you have any information or knowledge which would in any
6 way contradict the value that's reflected on that
7 inventory?

8 A. No. I do not.

9 Q. Have you come to learn in the furtherance of the
10 administration of the estate of Simon Bernstein, because
11 you were one of the co-PR's of that estate; correct?

12 A. Yes.

13 Q. Is there any information that you learned in
14 furtherance of being the personal representative of
15 Simon's estate that the \$25,000 figure on this inventory
16 is inaccurate?

17 A. No. I have not. This was a reasonable estimate
18 of the estate.

19 Q. Now, did you or your firm handle the preparation
20 of the estate planning documents for Shirley Bernstein?

21 A. Yes. We did.

22 Q. And one of the documents we heard that Shirley
23 Bernstein had was what I'm going to call the Shirley
24 Bernstein trust. Do you know what I'm referring to?

25 A. Yes.

1 Q. Did you work with Shirley Bernstein in
2 furtherance of funding that trust while she was alive?

3 A. Yes. We did.

4 Q. To your knowledge, other than the assets that are
5 on this inventory, and excluding things that you know
6 would not be included, such as joint property and those
7 assets, were all of her material assets, to your
8 knowledge, funded into her trust before she died?

9 A. As far as we know, yes.

10 MR. MANCERI: I don't have any further
11 questions, Your Honor.

12 THE COURT: Mr. Pratt.

13 CROSS EXAMINATION

14 BY MR. PRATT:

15 Q. You said that you worked on preparing the
16 inventory in Shirley Bernstein's estate?

17 A. Yes.

18 Q. Can you tell me was that something that you
19 handled personally, or something that you delegated to
20 an assistant?

21 A. I called Simon, personally.

22 Q. But was there any efforts you made to contact
23 like say banks or third-parties to determine if there
24 was any other assets?

25 A. When we had a discussion about what to put on the

1 inventory, yes, and he said this was all there was to
2 put on the inventory.

3 Q. This inventory is based off of information that
4 you were given by Simon?

5 A. Correct.

6 Q. You basically took his word for it and didn't do
7 any investigation of your own; is that right?

8 A. That's correct.

9 MR. PRATT: I have no further questions.

10 THE COURT: So there's an inventory and you
11 are the PR of Simon, one of them.

12 THE WITNESS: Yes.

13 THE COURT: What's the status of his
14 estate?

15 THE WITNESS: His estate is pending.
16 There's litigation ongoing in the estate. We
17 have waited on distributing anything from the
18 estate due to the pending litigation, Your
19 Honor.

20 THE COURT: Okay. Did you file an
21 inventory in Simon's estate?

22 THE WITNESS: Yes, sir.

23 THE COURT: Has the inventory been
24 published?

25 THE WITNESS: I believe it has, Your Honor.

1 THE COURT: Do you have an inventory from
2 Simon's estate?

3 MR. PRATT: No. We don't.

4 THE COURT: Do you object to them having
5 it?

6 THE WITNESS: No.

7 THE COURT: Okay. I'm going to let you
8 have it, Elliott. Thank you.

9 THE COURT: All right. Thank you. You can
10 have a seat.

11 THE WITNESS: Thank you.

12 THE COURT: So technically the hearing
13 today was to deal with the improprieties of
14 the pleadings, meaning the prior waivers. I
15 heard a lit about this last time. I know you
16 brought in witness. Mr. Roth is here
17 obviously because of Ms. Moran's potential
18 difficulty, but I'm trying to think of putting
19 substance ahead of form to determine how it
20 benefits the estate to go into that issue any
21 further. So do you have a position on that
22 Mr. Pratt, now that Eliot has had a chance to
23 have the benefit of counsel and you've seen
24 the newest round of waivers. There is no
25 petition filed yet by Ted Bernstein. If he

1 files one and the estate for some reason is
2 not ready to be closed, or shouldn't be
3 closed, we can deal with that at that time.

4 You know, sometimes things happen and the
5 other side not having made a final decision on
6 this, what I heard was not good about what I
7 heard took place with respect to the
8 processing of these documents, the waivers
9 that the children signed and, essentially the
10 one that was signed purportedly by Simon, but
11 does it really matter, and I think I'd want it
12 to matter before more time and money and
13 energy is put into that, because if it's not
14 going to put money into anybody's pocket, what
15 good does it do just to tell Ms. Moran that
16 she did a bad thing. If that's the case, I
17 don't know that it is. I'm not finding that.

18 MR. PRATT: I'm not too concerned about the
19 validity of the waivers now that they've
20 signed new waivers and they filed them. What
21 We're trying to accomplish here is not to
22 throw anybody under the bus, or burn anybody.
23 We want a clear picture of what happened in
24 this entire estate plan, and the parent's
25 died --

1 THE COURT: I've got that, but Elliott is
2 entitled to that which anyone else in his
3 position is entitled to, no more no less, so
4 I'm not restricting, nor am I expanding on
5 this concept. There's laws that govern that
6 what he is entitled to. They're saying that,
7 you know, he's -- I mean, I don't know that
8 there's a formal request in Shirley's estate
9 for any other documentation other than that
10 which you now have, because there is nothing
11 else that is filed, and if what Ted says and
12 what Mr. Spallina says is true, if we
13 requested a final accounting we would get the
14 same things, and that's not going to get you
15 anywhere. That's what they said.

16 MR. PRATT: My concern is that we're not
17 going to be in a giant rush to close the
18 estate, not that we want to turn this --

19 THE COURT: There's no petition to close it
20 right now. Let's be patient and see what
21 happens and there may be reasons not to, or to
22 close it, depending what goes on elsewhere.
23 But given that, I don't even know other than
24 what we now see in the inventories, because
25 those are the two official documents, I don't

1 know anything else about what monies may have
2 passed through anyone's hands. But this isn't
3 a case of first impression. The law deals
4 with what potential beneficiaries are entitled
5 to and what they're not, and what trustees can
6 provide, and what not.

7 Let's be patient and do it in the correct
8 forum. It seems like a lot, and what you want
9 to accomplish is going to take place before
10 Judge French, or if you can take it back to
11 Judge Garrison.

12 MR. PRATT: Yea, I think you're right. We
13 want to make sure that this piece of the
14 puzzle is accurate, and if it is, you might
15 not ever see us again.

16 THE COURT: So they say she funded the
17 trust before her lifetime. Maybe she had some
18 assets that were jointly titled. Those are
19 not probate assets, they go just like people
20 want. She may have cash under the pillow and
21 it goes. So I'm going to take no further
22 action right now on the issue of alleged
23 impropriety or defects in the form of a
24 pleading or other documents submitted to the
25 court in furtherance of the closing of the

1 estate of Shirley Bernstein. I'm going to
2 reserve on attorney's fees and any other
3 possible sanction, if and when that matter
4 becoming ripe for me to determine, but not
5 today.

6 MR. MANCERI: Your Honor.

7 THE COURT: It may not Happen, at all.

8 MR. MANCERI: I want to address one thing
9 that you mentioned, so everyone knows. We
10 intend on filing a petition to close this
11 estate very quickly.

12 THE COURT: But I can't preempt that and
13 deal with that. We have to be patient and
14 follow the rule. When you file it, you're
15 going to make sure Elliott gets served. You
16 serve him, and he can do whatever he wants
17 with it. This is all rule driven.

18 MR. MANCERI: No question about it, Your
19 Honor. We have the original waivers. As you
20 know, we don't file the one's in ink anymore.
21 We have them if you want to take them in open
22 court.

23 THE COURT: No. E-files are good. You're
24 allowed to e-file.

25 MR. MANCERI: We'll rest with that. We

1 have a record.

2 THE COURT: I don't get files, you can
3 tell.

4 MR. MANCERI: We have them.

5 MR. ROTH: Can I just address the Court,
6 Judge, just to save some time in the future?

7 THE COURT: Sure.

8 MR. ROTH: I represent Kimberly Moran. She
9 has been charged by the state attorney's
10 office in a direct information with
11 improprieties regarding the notarization.
12 She's fully cooperated with the sheriff's
13 office. Just so you know so there's no
14 mystery here, she caused to be filed the
15 original waivers, which did not have a
16 notarization. This is pursuant to her
17 statement to the sheriff's office, it was her
18 understanding they did not need to be
19 notarized. Apparently Your Honor requires
20 them to be notarized. In order not to "get in
21 trouble" with Mr. Spallina and Mr. Tescher for
22 improperly filing unsworn and un-notarized
23 waivers, she stated to the sheriff's office
24 that she did that. She recognized what she
25 did was wrong. We surrendered her to the Palm

1 Beach Sheriff's office jail on Friday. If she
2 was called as a witness in this proceeding,
3 she would respectfully evoke her 5th Amendment
4 privilege.

5 THE COURT: That's one reason I had her to
6 stay outside and tried not to bring her in,
7 because we don't cross over things between
8 criminal and probate, and we were going to
9 leave it to another time and place.

10 MR. ROTH: She's a secretary that made a
11 poor choice of judgment apparently, based upon
12 what I've been told by the state attorney's
13 office and the detective that investigated the
14 case. I wanted you to be aware of that. It
15 would be a waste of time for her to subpoenaed
16 again, because she would evoke her privilege.

17 THE COURT: Okay. Mr. Pratt, I don't think
18 there's any doubt she's not going to testify
19 that she's here pursuant to a request to do
20 that. She has a 5th Amendment right and we're
21 going to stick to that. I don't know that
22 would benefit you anyway.

23 MR. PRATT: If she were to plead the 5th,
24 we could draw whatever conclusions we want to
25 from that. The ramifications of that, not

1 that I plan to subpoena her in the future, or
2 that I intend to question her about that, but
3 if she pleads the 5th in a civil case, then we
4 can draw whenever conclusions we want to
5 from --

6 THE COURT: You can draw adverse inferences
7 from her, but she's nobody. It's not going to
8 get you anywhere. Yes, I'll draw an adverse
9 inference, but then it gets you zero.

10 MR. PRATT: There's other ways to get it
11 in.

12 THE COURT: I don't think there's any doubt
13 about what happened. I'm aware of it. I just
14 don't like to make more trouble for people
15 that --

16 MR. PRATT: I don't intend to.

17 THE COURT: It's not warranted. I didn't
18 know she was charged. There's obviously
19 consequences that she's now charged with a
20 crime. So dealing with all that sounds to be
21 enough, so let's leave that barking dog alone
22 for right now and see where it gets everybody.
23 It reaffirms my internal position that I made
24 along with my case manager to require waivers
25 to be notarized. This will be the case

1 example, that bench bar, as to why it will
2 stay that way. We did it for a reason, not
3 with this case in mind, but it's important
4 now. We changed that rule soon after I got on
5 the bench here in probate, and this isn't the
6 only case where we had a problem with waivers
7 and challenges later on, so it's a good idea
8 to keep on doing that. No we just need to
9 make sure we notarize them correctly, but I
10 don't think that would be a problem.

11 Prepare the order that I indicated and
12 we'll be done for today. Thank you everyone.

13 (Whereupon the Hearing was concluded at
14 5:13 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that the above Hearing was taken by me stenographically, and is a true and accurate transcription of my stenographic notes. Witness my hand and official seal this 6th day of December, 2013.

Michael Todd Berkowitz
Notary Public - State of Florida

IN THE CIRCUIT COURT FOR
PALM BEACH COUNTY, FLORIDA

CASE No.: 502011CP000653XXXXSB

IN RE: ESTATE OF SHIRLEY BERSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner,

vs.

TESCHER & SPALLINA, P.A., (and all parties
associates and of counsel); ROBERT L. SPALLINA
(both personally & professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor trustee)
(both personally and professionally); and JOHN
and JANE DOE'S (1-5000)

Respondents.

ORIGINAL

Transcript of Proceedings
Before the Honorable Martin H. Colin,
Circuit Court Judge

DATE TAKEN: January 2, 2014

TIME: Commenced at 10:03 a.m.
Concluded at 10:08 a.m.

LOCATION: South County Courthouse
200 West Atlantic Avenue
Courtroom 8
Delray Beach, Florida 33444

REPORTED BY: Erica Field,
Stenograph Shorthand Reporter and
Notary Public, State of Florida

A P P E A R A N C E S :

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Eliot Ivan Bernstein, Pro Se
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On behalf of the Petitioner,

Mark R. Manceri, Esquire
Mark R. Manceri, P.A.
2929 East Commercial Boulevard
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On behalf of the Respondents.

I N D E X

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CERTIFICATE OF REPORTER	9

PROCEEDINGS

1
2 MR. MANCERI: Good morning, your Honor.
3 We're here on the estate of Shirley Bernstein. We
4 were here on a status conference that your JA
5 called and instructed me to set. I think it's as a
6 result of a letter I sent to Court in respect for a
7 motion to transfer that we had filed in front of
8 Judge French. I sent you a letter.

9 THE COURT: I have the motion to transfer.

10 MR. MANCERI: Your assistant wasn't really
11 sure what you wanted to accomplish today when she
12 instructed me to set this hearing, but as a matter
13 of fact, your Honor, there are two matters relating
14 to two estates. One is the Estate of Shirley
15 Bernstein, which is in front of you, and the Estate
16 of Simon Bernstein, which is in front of Judge
17 French. Eliot Bernstein, who was one of the
18 children of Simon and Shirley Bernstein has filed
19 numerous pleadings in both of the estates, all of
20 them are virtually duplicates of one another, and
21 under the administrative order 2.302, we have filed
22 a motion to transfer and consolidate the two
23 estates of Simon and Shirley Bernstein, who the are
24 parents of Eliot Bernstein and my client, Ted
25 Bernstein, as well as the grandchildren, who are

1 ultimate beneficiaries of both of these estate or
2 the mother load of both of the estates, to transfer
3 both of them to you because you have the lower case
4 number. So we would ask that you consider -- and
5 here is a notice of filing that I did, Judge, which
6 shows -- these are schedules which show all of the
7 various pleadings up through September 25th that
8 are comparative and duplicate between the two
9 estates. As you may remember, your Honor, we're
10 going to ask --

11 THE COURT: You're Eliot?

12 MR. BERNSTEIN: Yes, sir.

13 THE COURT: What do you say about their
14 motion?

15 MR. BERNSTEIN: Well your Honor, the first
16 thing is I think he just said he is representing my
17 brother, Ted, when in fact, I believe Ted filed
18 with you an appearance with Spallina, his client
19 that was his counsel, and Mr. Manceri is
20 representing, I believe, Spallina & Tescher in his
21 notices of appearance with your Court. So I'm not
22 exactly sure -- and one more thing, your Honor,
23 just real quick to set the record straight, the
24 Court fixed the docket -- your docket, and there is
25 a list of respondents. I'd like to just make sure

1 -- take like an attendance of who is here -- who's
2 represented.

3 THE COURT: I don't want you to do that, I
4 just want to know what your position is on their
5 motion.

6 MR. BERNSTEIN: Well what is their motion is
7 the first thing?

8 THE COURT: Basically, there is two estate
9 cases of your parents, one is before me and one is
10 before Judge French. I have the lower case number.
11 They said there is some similar matters that are
12 going on. They want one judge to handle it.

13 MR. BERNSTEIN: That motion that you're
14 talking about was filed in Judge French's Court so
15 you're ruling out Judge French's motion?

16 THE COURT: Sure, yes.

17 MR. BERNSTEIN: Yeah?

18 THE COURT: He's not here.

19 MR. BERNSTEIN: Okay, because that hearing
20 was canceled. So my belief is that we shouldn't
21 merge the cases at this point. We've got, you
22 know, evidence of forgery and fraud in the Court.

23 THE COURT: I don't want the merits of it. I
24 want to know why, procedurally, we shouldn't have
25 one judge hear the whole thing. It can be me or

1 Judge French, but --

2 MR. BERNSTEIN: Well I filed a motion --

3 THE COURT: -- the lower case number is with
4 me.

5 MR. BERNSTEIN: I filed a motion this morning
6 that it shouldn't be either of you two, that
7 perhaps you guys need to be disqualified because
8 you're centrally involved. The frauds occurred in
9 your Court and on your Court. Your signature is on
10 a bunch of the documents that were used
11 fraudulently to close the estate of my mother,
12 which caused its opening, and it might have to go
13 to two fresh judges, not that I'm saying that
14 anybody's involved, but we have to depose you about
15 signatures, about things in the Court and perhaps
16 officers of the Court.

17 THE COURT: Okay.

18 MR. BERNSTEIN: And further, your Honor --

19 THE COURT: Stop.

20 MR. BERNSTEIN: -- these officers --

21 THE COURT: Stop. I'm cutting you off.

22 MR. BERNSTEIN: Yes, sir.

23 THE COURT: Motion to transfer granted. The
24 cases are not consolidated. They can be two
25 separate cases, they're just both before me.

1 MR. MANCERI: That's correct, Judge. Under
2 the administrative order, that's correct.

3 THE COURT: Okay. What else for today?

4 MR. MANCERI: That's it, Judge.

5 THE COURT: Okay.

6 (The proceedings concluded at 10:08 a.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF PALM BEACH

I, Erica Field, Stenograph Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the foregoing Pages 4 through 8, inclusive, are a true and complete record of my stenograph notes.

I further certify that I am not a relative or employee of any of the parties, nor am I a relative or counsel connected with the parties' attorneys or counsel connected with the action, nor am I financially interested in the outcome of the action.

DATED this 7th day of January, 2014.


Erica Field

Stenograph Shorthand Reporter



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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION
CASE NO. 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner,

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel);
ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et al.,

Respondents.

- - -
PROCEEDINGS BEFORE THE
HONORABLE MARTIN H. COLIN
VOLUME I
- - -

DATE: FEBRUARY 18, 2014

TIME: 1:32 P.M. - 2:38 P.M.

2

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 25

4

1 THE COURT: All right. So good afternoon,
 2 folks. I'm Judge Colin. This is case number
 3 2012CP004391, Estate of Simon Bernstein.
 4 Counsel, make your appearances, please.
 5 MR. BLOCK: Irwin Block and Donald Tescher
 6 for Donald Tescher.
 7 MR. GLASKO: William Glasko on behalf of
 8 Jill Iantoni and Lisa Freidman.
 9 THE COURT: Spell that last name.
 10 MR. GLASKO: G-l-a-s-k-o.
 11 THE COURT: No, not --
 12 MR. GLASKO: Iantoni, I-a-n-t-o-n-i. And
 13 F-r-e-i-d-m-a-n.
 14 MR. TESCHER: Donald Tescher on behalf of
 15 Tescher & Spallina, P.A.
 16 MR. FEAMAN: Good afternoon, Your Honor.
 17 Peter Feaman on behalf of the claimant against
 18 the Estate of Simon Bernstein, Mr. William
 19 Stansbury. With me in the courtroom today is
 20 Nancy Guffey of my office.
 21 THE COURT: Okay. Welcome.
 22 MR. PANKAUSKI: Good afternoon, Your
 23 Honor. John Pankauski. I'm joined by attorney
 24 Alan Rose. We represent Ted Bernstein, who is
 25 to our right.

3

1 APPEARING ON BEHALF OF CREDITOR WILLIAM
 STANSBURY:
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 12
 13 ALSO PRESENT:
 14 Ted S. Bernstein
 William Stansbury
 15 Candice Bernstein
 David Roth, Esq.
 16
 17 ---
 18 BE IT REMEMBERED, that the following
 19 proceedings were taken in the above-styled cause
 20 before Judge Martin H. Collin, at the South County
 21 Courthouse, 200 West Atlantic Avenue, Courtroom 2,
 22 City of Delray Beach, County of Palm Beach, State of
 23 Florida, beginning at 1:32 p.m., on Tuesday, the
 24 18th day of February, 2014, to wit:
 25 ---

5

1 THE COURT: Okay.
 2 MR. BERNSTEIN: Good afternoon, Your
 3 Honor. Eliot Bernstein, pro se.
 4 THE COURT: Okay.
 5 All right. First matter is motion to
 6 discharge and to withdraw, correct?
 7 MR. BLOCK: Petition for resignation and
 8 discharge as co-PRs. And I represent
 9 Mr. Tescher. And I think Robert is here as a
 10 co-PR representing himself.
 11 And, to my knowledge, there are --
 12 THE COURT: Excuse me. Can I see a
 13 courtesy copy, --
 14 MR. BLOCK: -- no objections.
 15 THE COURT: -- copy of the motion, please?
 16 Thanks.
 17 Okay. So starting with all the interested
 18 persons -- you're standing, is there a reason
 19 for that?
 20 MR. BLOCK: I have a proposed order.
 21 THE COURT: Okay. Hold on to that for a
 22 second.
 23 It's represented that there may not be any
 24 objection to the petition for resignation and
 25 discharge. So tell me if that's the case from

<p style="text-align: right;">6</p> <p>1 all interested persons and their counsel. 2 MR. PANKAUSKI: Good afternoon, Your 3 Honor. On behalf of Defendant Bernstein, the 4 trustee of the decedent's revocable trust, we 5 stipulate that you may accept the resignation 6 of the two co-personal representatives. 7 In their prayer for relief they ask Your 8 Honor to handle everything else at a later date 9 and we consent to that. Clearly, we can't have 10 a petition for discharge. We can stipulate -- 11 or, excuse me, we can agree that you can accept 12 their resignations and later appoint another 13 personal representative. 14 THE COURT: Okay. 15 MR. FEAMAN: Peter Feaman, Your Honor, on 16 behalf of Mr. Stansbury, interested person. 17 We have no objection to the petition. 18 There is a proposed order that was submitted to 19 us this morning. We have only one objection to 20 the proposed order when Your Honor is ready to 21 consider that. 22 THE COURT: Okay. Counsel. 23 MR. GLASKO: Judge, William Glasko. There 24 is a few motions set for today. And I just 25 want to make a comment about the bigger issue,</p>	<p style="text-align: right;">8</p> <p>1 attorneys for Ted, who is the personal 2 representative of that estate. 3 If the Judge, Your Honor, let's them out, 4 I would ask that there be provisions in the 5 order such that the Court retains jurisdiction 6 over them, that they don't walk away 7 discharged, that they are still before Your 8 Honor to the extent that if it is determined 9 that there was some sort of problem with the 10 drafting of the will, with the administration 11 of the estate, or any other of these issues 12 that they're still -- 13 THE COURT: Well, did you see their 14 wherefore clause? 15 MR. GLASKO: I'm sorry? 16 THE COURT: Did you see their wherefore 17 clause? 18 MR. GLASKO: Yes, sir. 19 THE COURT: It says they wanted me to 20 accept their resignation, revoke their letters, 21 and reserve on all issues relating to 22 discharge. 23 MR. GLASKO: Okay. And I don't have an 24 objection to them getting out. I haven't seen 25 the proposed order.</p>
<p style="text-align: right;">7</p> <p>1 which is that this law firm represented Simon 2 Bernstein and prepared his will. My 3 understanding is that there are issues of 4 forgery. There have been some criminal cases 5 opened as a result of some forgeries that 6 relate to estate documents. 7 My understanding is that in discovery 8 there were two trust amendments to the mother's 9 trust, which there is some question as to 10 whether or not there is a forgery in that. We 11 believe that there is an undue influence and/or 12 tortious inference case. 13 My firm was just retained last night. And 14 I've had a limited ability to review these 15 documents. But based on what I've seen and 16 what I've heard, we intend to open an action 17 for undue influence, single tortious 18 interference in this case as it relates to the 19 father's will, which was drafted by Tescher & 20 Spallina. 21 My concern, Judge, is that if you let 22 these lawyers out as co-personal 23 representatives. And, again, what I've seen is 24 a second notice of hearing on mom's estate 25 where they're asking to withdraw as the</p>	<p style="text-align: right;">9</p> <p>1 THE COURT: Okay. I thought -- I heard it 2 was circulated. Maybe you didn't get it to 3 him. Have him take a look at it. 4 MR. TESCHER: He may not have. 5 MR. PANKAUSKI: I haven't seen it either, 6 Your Honor. 7 THE COURT: Okay. Take a look. This is 8 the time to do it. 9 And Eliot is pro se. Can someone give him 10 a copy, as well? 11 MR. TESCHER: I believe Mr. Bernstein did 12 get one. 13 THE COURT: Did you get a copy, Eliot? 14 MR. BERNSTEIN: I've got so many things in 15 the last few days. 16 THE COURT: Well, okay, but did you get a 17 copy of the proposed order? 18 MR. BERNSTEIN: Can I see it? I don't 19 think so. 20 THE COURT: If you have one for me that 21 would be helpful. I can look at it at the same 22 time. 23 MR. BERNSTEIN: I don't recall ever seeing 24 this. 25 THE COURT: Say it again.</p>

10

1 MR. BERNSTEIN: I don't recall ever seeing
 2 this.
 3 THE COURT: Okay. Well, look at it.
 4 Thank you.
 5 MR. GLASKO: I have no objection to that,
 6 Judge.
 7 THE COURT: Okay. So there's no objection
 8 from Mr. Glasko for his clients.
 9 Mr. Feaman, you said there was one area,
 10 you had an objection to the form of the order?
 11 MR. FEAMAN: Yes, Your Honor, if it please
 12 the Court.
 13 THE COURT: Where is that?
 14 MR. FEAMAN: Paragraph six recites, Your
 15 Honor, that the successor personal
 16 representative or curator is authorized to pay
 17 blank dollars retainer.
 18 I respectfully suggest to the Court that
 19 that should be left up to the discretion of the
 20 successor personal representative or the
 21 curator, as the case may be, to make that
 22 decision. I don't think, at this time, that we
 23 need to be in the position to anticipate or go
 24 that far.
 25 THE COURT: Okay. I understand what

11

1 you're saying.
 2 MR. FEAMAN: Other than that, I have no
 3 objection.
 4 THE COURT: Okay. Mr. Pankauski?
 5 MR. PANKAUSKI: No objection, Your Honor.
 6 THE COURT: Okay. And Eliot Bernstein?
 7 MR. BERNSTEIN: Just the objections I
 8 raised in the filing on February 14th.
 9 THE COURT: That's -- okay. So I don't
 10 know what those are. Right now the only
 11 question is do you agree with the form of the
 12 order?
 13 MR. BERNSTEIN: Yeah.
 14 THE COURT: Okay.
 15 MR. BERNSTEIN: Except the part that he's
 16 saying about the amount.
 17 THE COURT: Number six?
 18 MR. BERNSTEIN: And is there bonding or
 19 surety?
 20 THE COURT: Well, there is no bond on a
 21 discharge.
 22 MR. BERNSTEIN: We're not discharging him
 23 yet, are we?
 24 THE COURT: Yeah, I'm sorry, no bond on a
 25 resignation.

12

1 MR. BERNSTEIN: Oh, okay.
 2 THE COURT: They're not being discharged,
 3 they're resigning and their letters to revoke.
 4 MR. BERNSTEIN: Okay. Thank you.
 5 THE COURT: Okay. So why do we need to,
 6 in this order, fund what the successor PR or
 7 curator is to perhaps --
 8 MR. BLOCK: We have no objection to
 9 striking that paragraph.
 10 THE COURT: Okay. I'm striking it.
 11 MR. GLASKO: Striking the entire paragraph
 12 six?
 13 THE COURT: Number six out, yeah.
 14 MR. GLASKO: Thank you, sir.
 15 THE COURT: I'm going to add, though, a
 16 new number six which is that -- and here's the
 17 language. I'll write it for myself and then
 18 I'll tell you what I'm going to do.
 19 Okay. Number six says, The Court reserves
 20 jurisdiction to enforce this order.
 21 Okay. I've signed it with the changes.
 22 MR. TESCHER: Your Honor, there is one
 23 blank --
 24 THE COURT: Oh, so hold on. Paragraph
 25 two, there is a blank there. What is it that

13

1 the moving party is asking that I put in there
 2 where it says within blank days, business days?
 3 MR. BLOCK: What do you want, 60 days?
 4 MR. TESCHER: It's the later of, I think,
 5 the date of the order or when the successor is
 6 appointed, if I'm not mistaken. Thirty days to
 7 60 days would be fine.
 8 THE COURT: Okay. Counsel.
 9 MR. FEAMAN: That sounds too long to me,
 10 Your Honor.
 11 THE COURT: Well, give me the --
 12 MR. FEAMAN: I would say five business
 13 days he can begin the process of turning
 14 everything over.
 15 THE COURT: Well, this doesn't say begin
 16 the process. This says, shall deliver. That's
 17 all the property. That's everything. That
 18 would be by next Monday every single thing in
 19 the estate is to be turned over to a successor,
 20 who I haven't even named yet.
 21 MR. FEAMAN: And assuming that you don't
 22 name a successor today, then I would like to
 23 see that done within 10 business days so we can
 24 move this along, Your Honor.
 25 THE COURT: Okay. What do you say,

14

1 Mr. Pankauski?
 2 MR. PANKAUSKI: I think you need more like
 3 a couple weeks, 14, 15.
 4 MR. GLASKO: No objection to 14.
 5 MR. BLOCK: We would like 15 days.
 6 THE COURT: You would like what?
 7 MR. BLOCK: Fifteen.
 8 THE COURT: Fifteen. Okay. So I have 10,
 9 14, 15.
 10 Eliot, what do you want? You want
 11 tomorrow, right?
 12 MR. BERNSTEIN: Yesterday.
 13 THE COURT: Okay. Sure.
 14 MR. BERNSTEIN: Thank you.
 15 THE COURT: Okay. I don't want you folks
 16 to argue about what a business day is. It's
 17 going to be March 4th. It can be sooner.
 18 All right. I'll get you copies.
 19 Okay. What's next?
 20 MR. TESCHER: Your Honor, there is a
 21 companion order, petition and order to withdraw
 22 as counsel on the Simon Bernstein estate.
 23 THE COURT: Any objection?
 24 MR. GLASKO: Once again, Judge, I just
 25 want to make sure that the reservation of

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1 prior lawyers without the specific reservation.
 2 What I was asking for was a specific
 3 reservation just so that it's clear to all
 4 parties that these lawyers are still part of
 5 this litigation, in as much as there are live
 6 and actual circumstances being litigated right
 7 now that relate to their conduct.
 8 So what I don't want is just a clean
 9 order.
 10 THE COURT: Okay. So give me the legal
 11 authority for what you're asking. Give me the
 12 statute or the case that says that what you
 13 want is appropriate in an order on a motion to
 14 withdraw.
 15 MR. GLASKO: I just wanted to clarify. I
 16 don't have a statute or a case.
 17 THE COURT: Any authoritative basis from
 18 any source for that?
 19 MR. GLASKO: Judge, I think the Court has
 20 jurisdiction and discretion to clarify in the
 21 order that the attorneys are not being let go.
 22 THE COURT: Okay.
 23 MR. PANKAUSKI: Excuse me, Your Honor.
 24 THE COURT: Yes.
 25 MR. PANKAUSKI: The firm of Tescher &

15

1 jurisdiction is in the order with regard to the
 2 attorneys and any part that they may have in
 3 subsequent litigation.
 4 THE COURT: I'll take a look at the order.
 5 Show it to him.
 6 So if you wouldn't mind, Mr. Spallina, to
 7 circulate the order to everybody.
 8 Well, Mr. Pankauski, you're going to be
 9 representing Ted; is that correct?
 10 MR. PANKAUSKI: Yes, Your Honor, along
 11 with Mr. Rose.
 12 THE COURT: Okay. So, I mean, they could
 13 do this by an order or by a stipulation for
 14 substitution, either one.
 15 So tell me the legal basis for what you
 16 want added to this order.
 17 MR. GLASKO: Well, Judge, what I want --
 18 THE COURT: Tell me what the law -- give
 19 me the law first, because I'll just allow a
 20 stipulation. People are just allowed to always
 21 substitute one lawyer for another.
 22 MR. GLASKO: If there were a stipulation
 23 of substitution of counsel and the Court
 24 entered the order, I think the Court, I think
 25 the Court would have jurisdiction over the

17

1 Spallina and Mr. Spallina represent Mr. Tescher
 2 and Mr. Spallina as co-personal representatives
 3 of the estate. They don't represent Ted
 4 Bernstein.
 5 I think what the order was intended to say
 6 was that Tescher & Spallina and Robert Spallina
 7 are authorized to withdraw as the attorneys for
 8 the co-personal representatives.
 9 THE COURT: Or for Ted Bernstein in his
 10 personal representative capacity?
 11 MR. PANKAUSKI: No, Mr. Bernstein isn't
 12 personal representative of the Simon Bernstein
 13 estate.
 14 THE COURT: Okay. So what's --
 15 MR. PANKAUSKI: Mr. Spallina individually
 16 and Mr. Tescher individually were the
 17 co-personal representatives.
 18 THE COURT: Well, I'm sorry, I'm confused.
 19 They say in their motion and order that they
 20 represent Ted Bernstein. That's not true in
 21 this case?
 22 MR. PANKAUSKI: That's correct, in the
 23 Estate of Simon Bernstein.
 24 THE COURT: Okay. Who do you represent in
 25 the Estate of Simon Bernstein?

<p style="text-align: right;">18</p> <p>1 MR. TESCHER: We represent ourselves. 2 THE COURT: Okay. Well, that's not what 3 the order says. 4 MR. TESCHER: You are correct, that is... 5 THE COURT: So what should the order say? 6 MR. TESCHER: Withdrawal of counsel for 7 personal representatives, Donald R. Tescher and 8 Robert Spallina. 9 THE COURT: All right. So do you have a 10 different position now that they've said that? 11 MR. GLASKO: No, Judge. I actually 12 thought we were all on the order where they 13 were asking to withdraw as attorneys in the 14 Shirley estate. 15 THE COURT: No. We're still on Simon's 16 case. 17 MR. GLASKO: So they've asked to be let go 18 as personal representatives and the second 19 order is discharged as the attorneys for 20 themselves? 21 THE COURT: Right. 22 Okay. That's granted. 23 And, Mr. Spallina, you're the attorney for 24 yourself in this case, correct? 25 MR. SPALLINA: Yes, sir.</p>	<p style="text-align: right;">20</p> <p>1 the attorney for Ted Bernstein? 2 MR. TESCHER: Yes, Your Honor. 3 THE COURT: Okay. Any objection? 4 MR. GLASKO: Again, Judge, I would ask for 5 a reservation of jurisdiction. 6 THE COURT: Okay. Do you have 7 authoritative position on that? 8 MR. GLASKO: I don't. 9 THE COURT: That request is denied, 10 because if you want to have a request like 11 that, have authority to support it. 12 MR. GLASKO: Yes, sir. 13 THE COURT: Just asking without authority 14 won't do it. 15 Okay. Granted. 16 MR. TESCHER: Your Honor, that concludes 17 the three motions that we had filed for hearing 18 at 1:30. 19 THE COURT: So I know there are more 20 motions. Do you folks want them to stay around 21 for the next series of motions? 22 MR. BLOCK: No, sir. 23 THE COURT: No, I'm asking the other 24 people who are moving parties. 25 MR. PANKAUSKI: No, Your Honor, they're</p>
<p style="text-align: right;">19</p> <p>1 THE COURT: And you're also the attorney 2 for the -- and the law firm is attorney for 3 who? For themselves, for itself? 4 MR. SPALLINA: For the co-PRs of the 5 estate. 6 THE COURT: And who is that? 7 MR. SPALLINA: Donald Tescher and Robert 8 Spallina. 9 THE COURT: Okay. And you're withdrawing 10 as attorneys for yourselves in your capacity as 11 co-PR? 12 MR. TESCHER: Yes, Your Honor. 13 THE COURT: All right. Go ahead. 14 MR. TESCHER: Your Honor, the third motion 15 that we set for today was on the Shirley 16 Bernstein estate for an order on a motion to 17 withdraw as counsel. 18 THE COURT: Okay. Any objection? 19 MR. PANKAUSKI: I'm sure I don't. I just 20 need to see the order, Your Honor. 21 THE COURT: Okay. Here you say your 22 attorney for Ted Bernstein here again. 23 MR. TESCHER: That is correct in the 24 Shirley Bernstein estate, Your Honor. 25 THE COURT: So in Shirley's estate you are</p>	<p style="text-align: right;">21</p> <p>1 not required to stay. 2 THE COURT: Okay. Thanks. We'll get you 3 copies if you wait outside. 4 MR. BLOCK: Thank you. 5 MR. BERNSTEIN: Excuse me, Your Honor. 6 Did they resign as trustees, too, as well as 7 PR? Is that in there? 8 THE COURT: No, nothing about any trust is 9 before me. 10 (Mr. Block, Mr. Tescher and Mr. Spallina 11 left the courtroom.) 12 THE COURT: Okay. So now I have a motion 13 for appointment of Ted Bernstein as curator, a 14 motion for appointment of Eliot Bernstein as 15 curator or successor PR, or, in the 16 alternative, some other motions. And I know 17 that because I have the response from 18 Mr. Feaman, but I don't have the motion itself. 19 MR. PANKAUSKI: The motion. 20 THE COURT: I need the moving -- you know 21 what, I just got some things in the mail. Let 22 me see. 23 Okay. I have Ted Bernstein's motion for 24 appointment of curator or administrator ad 25 litem. Is that the traveling pleading?</p>

22

1 MR. PANKAUSKI: Yes, Your Honor.
 2 THE COURT: Okay. And I have Mr. Feaman's
 3 response in opposition.
 4 Okay. Are there any other pleadings that
 5 I am to consider?
 6 MR. FEAMAN: No. I have an ore tenus
 7 matter that I was apprised of this morning,
 8 Your Honor.
 9 THE COURT: Okay. But no one's telling me
 10 that, though.
 11 MR. FEAMAN: It's --
 12 THE COURT: Oh, it's your ore tenus
 13 motion?
 14 MR. FEAMAN: Yes, mine.
 15 THE COURT: Okay. Sure.
 16 MR. FEAMAN: I'm asking permission to say
 17 it.
 18 THE COURT: Okay. Sure.
 19 MR. FEAMAN: I found out from Eliot
 20 Bernstein this morning that he -- the ore tenus
 21 motion is an objection to Mr. Pankauski
 22 representing Ted Bernstein in this matter.
 23 The basis of the motion, and I'm prepared
 24 to call Mr. Eliot Bernstein to the stand, is
 25 that Eliot Bernstein consulted with

24

1 everybody is here, why don't I at least have a
 2 hearing on or see what's going on with the
 3 current motions. I may defer on entering an
 4 order until I determine what the merits are of
 5 your motion to disqualify.
 6 MR. FEAMAN: Yes, sir.
 7 THE COURT: Any objection to that
 8 procedure?
 9 MR. PANKAUSKI: No, Your Honor.
 10 MR. GLASKO: No, sir.
 11 THE COURT: Okay. All right. So now on
 12 Simon's estate, because I let go the prior PRs,
 13 are we now in a situation where there is no PR
 14 or curator of Simon's estate; is that true?
 15 MR. PANKAUSKI: Yes, Your Honor.
 16 THE COURT: Everyone agree with that?
 17 MR. FEAMAN: Yes.
 18 THE COURT: So does everyone agree we need
 19 to have someone take their place, that is
 20 Tescher and Spallina?
 21 MR. FEAMAN: Yes, sir.
 22 MR. GLASKO: Yes, sir.
 23 MR. PANKAUSKI: Yes, Your Honor.
 24 THE COURT: So let me go around the room.
 25 Mr. Pankauski, what is your request for

23

1 Mr. Pankauski to represent him and had a couple
 2 of one-hour telephone conversations concerning
 3 the representation of Mr. Pankauski, supplied
 4 him documents, which were very germane to
 5 Mr. Bernstein, Eliot Bernstein's position in
 6 this case, which are not aligned with Mr. Ted
 7 Bernstein.
 8 And so I'm prepared to go forward and
 9 present evidence today.
 10 THE COURT: Okay. All right. But a
 11 motion for disqualification of counsel has to
 12 be in writing. You may have just learned about
 13 it, but that definitely has to be reduced to
 14 writing.
 15 MR. FEAMAN: It does, Your Honor.
 16 However, I don't want to be in a position to
 17 have waived anything by allowing the attorney
 18 to go forward and let my silence --
 19 THE COURT: How about this, not knowing,
 20 other than what you just told me and not
 21 hearing from Mr. Pankauski, --
 22 MR. FEAMAN: Yes, sir.
 23 THE COURT: -- I'm going to let you or
 24 whoever thinks it's appropriate file that
 25 motion in writing. But, in the meantime, since

25

1 relief in that area?
 2 MR. PANKAUSKI: That you appoint Ted
 3 Bernstein as curator.
 4 THE COURT: And, Mr. Feaman, what's your
 5 position there?
 6 MR. FEAMAN: Our position is that we
 7 suggest Eliot Bernstein or, in the alternative,
 8 an attorney that I've suggested to counsel is
 9 Brian O'Connell from the law firm of Casey,
 10 Ciklin -- I guess it's Ciklin, Lubitz now, a
 11 Board-certified probate wills and trust
 12 attorney for over 20 years to be a curator.
 13 THE COURT: I know Mr. O'Connell.
 14 MR. FEAMAN: Okay. Until we can get this
 15 straightened out, Your Honor.
 16 THE COURT: What do you say?
 17 MR. GLASKO: Judge, I would like to see an
 18 independent curator appointed. We believe that
 19 both Ted and Eliot are going to be fact
 20 witnesses with regard to the issues that are
 21 going forward in this case.
 22 The attorneys were common to Ted and the
 23 decedent Simon with regard to a will that was
 24 drafted subsequent to the original will with
 25 regard to trust modifications and so forth, so.

26

1 THE COURT: So when you say an independent
 2 curator, you mean someone other than the person
 3 suggested by Mr. Feaman?
 4 MR. GLASKO: Neither Ted nor Eliot, but an
 5 independent. These people are fact witnesses
 6 and I believe there is a conflict, particularly
 7 with Ted.
 8 THE COURT: All right. So how do -- I
 9 mean, this is a pick a name out of the hat type
 10 situation?
 11 MR. GLASKO: I'm sorry?
 12 THE COURT: When you say an independent,
 13 how is that independent person going to be
 14 derived?
 15 MR. GLASKO: Well, I would suggest that
 16 the Court could appoint somebody.
 17 THE COURT: No, I don't do that anymore,
 18 because the last time I did that and that
 19 curator or PR or trustee actually sought fees,
 20 the issue came up, well, I may be more
 21 favorable to that person because I appointed
 22 them.
 23 MR. GLASKO: Yes, sir.
 24 THE COURT: So I don't have any active
 25 involvement in the selection any longer of the

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1 person in that position.
 2 MR. GLASKO: Then I would ask the Court to
 3 direct all counsel to agree to somebody.
 4 THE COURT: Okay. So --
 5 MR. GLASKO: May I make one more point,
 6 Judge?
 7 THE COURT: Go ahead.
 8 MR. GLASKO: I wanted to make sure that
 9 the Court understands, I just came into this
 10 case, so I know you know more than I do or at
 11 least I believe you know the case.
 12 The original estate plan was -- there are
 13 five children, three were going to receive.
 14 The will --
 15 THE COURT: You want to just tell me
 16 something ahead of what everyone else wants to
 17 tell me now. You want this be your opening
 18 statement?
 19 MR. GLASKO: No, that's fine, Judge.
 20 THE COURT: Because I'm ready to go into
 21 hearing your positions. No, I'm going to let
 22 everyone be heard.
 23 Okay. So, Mr. Pankauski, you want Ted.
 24 Mr. Feaman wants an independent, but he says
 25 Brian O'Connell. Mr. Glasko says independent

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1 who we kind of pick by consensus of the moving
 2 parties or some other neutral method.
 3 Is this a case that -- why shouldn't that
 4 position be the one that I take on this as
 5 opposed to having an interested person such as
 6 Ted involved?
 7 MR. PANKAUSKI: Your Honor, Mr. Bernstein
 8 is uniquely qualified to serve and he's willing
 9 to serve without compensation.
 10 He also has personal knowledge about
 11 litigation which the estate is involved in. He
 12 also has personal knowledge about the assets
 13 and liabilities of the decedent, his father.
 14 THE COURT: So let me -- did Simon die
 15 testate or intestate?
 16 MR. PANKAUSKI: He died with a will,
 17 testate.
 18 THE COURT: And who were the designated
 19 PRs?
 20 MR. PANKAUSKI: The designated PRs were
 21 Mr. Tescher and Mr. Spallina, who have now
 22 resigned.
 23 THE COURT: Okay. And no one else?
 24 MR. PANKAUSKI: Correct. No successor was
 25 named in the will.

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1 THE COURT: Is there a preference of
 2 appointment that someone has at this stage?
 3 MR. PANKAUSKI: Well, nobody has a
 4 majority in interest of the rev trust
 5 beneficiaries, no.
 6 THE COURT: Everyone agree with that?
 7 MR. FEAMAN: That's correct.
 8 THE COURT: No preference, okay.
 9 All right. So it's Ted against the world.
 10 Okay. So I got it.
 11 Well, no, you want Eliot or who, Mr.
 12 Feaman?
 13 MR. FEAMAN: Eliot or independent.
 14 THE COURT: Or independent. Okay.
 15 MR. BERNSTEIN: Excuse me, Your Honor.
 16 THE COURT: And, Eliot, who do you want?
 17 MR. BERNSTEIN: I'm happy with Peter's.
 18 I'm happy with the independent. I'd like to be
 19 a co-personal representative and I'll, you
 20 know, bow out of any conflict situation that I
 21 would see and feel obligated to.
 22 THE COURT: Okay. All right.
 23 So, Mr. Pankauski, you're up on your
 24 motion.
 25 MR. PANKAUSKI: Thank you, Your Honor.

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1 Mr. Ted Bernstein, my client, is not a
 2 beneficiary under the estate. He also is
 3 trustee of his father's revocable trust.
 4 And I'm prepared to call Ted to ask him
 5 questions so you have a record.
 6 THE COURT: Okay. Your first witness.
 7 MR. FEAMAN: Your Honor, if it please the
 8 Court, I have prepared an opening statement, if
 9 Your Honor would allow it.
 10 THE COURT: Okay.
 11 MR. FEAMAN: It's fairly brief.
 12 THE COURT: Okay. Go ahead.
 13 MR. FEAMAN: All right. Thank you, Your
 14 Honor.
 15 If I may approach the --
 16 THE COURT: Sure.
 17 MR. FEAMAN: I represent Mr. Stansbury.
 18 And I want to set a little predicate as to who
 19 Mr. Stansbury is. He's a creditor of the
 20 estate, because he's a plaintiff and the estate
 21 is one of the defendants.
 22 However, Your Honor, Mr. Stansbury is a
 23 lot more than that as it relates to Ted
 24 Bernstein. Because before the passing of Simon
 25 Bernstein, which brings us here today,

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1 Mr. Stansbury brought suit against Simon
 2 Bernstein, but also his son Ted Bernstein, both
 3 in their individual capacities and various
 4 corporations that they controlled.
 5 During the time that Mr. Stansbury, who is
 6 in the courtroom today, did business with the
 7 Bernsteins through life insurance companies.
 8 Now, the claims in the underlying estate are
 9 for breach of fiduciary duty against both
 10 father and son, breach of contract, fraud in
 11 the inducement.
 12 And while it may seem on the surface that
 13 as co-defendants their interests are aligned,
 14 it's not, because it's a multi-count complaint,
 15 Your Honor. And one of the iterations of the
 16 complaint is attached to our submission.
 17 We have a second complaint. The second
 18 complaint, Your Honor, which is more relevant.
 19 The second amended complaint --
 20 THE COURT: And these are circuit civil
 21 actions, correct?
 22 MR. FEAMAN: Yes, Your Honor. They're in
 23 Judge Peter Blanc's division.
 24 And the second amended complaint, which is
 25 actually the operative document. I apologize,

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1 Your Honor, the amended complaint was attached.
 2 May I approach?
 3 THE COURT: Sure.
 4 MR. FEAMAN: Thank you. And it's marked
 5 as Stansbury's Exhibit B, Your Honor.
 6 I'd like to draw your attention first to
 7 Count IV of the second amended complaint,
 8 because Count IV is a count against Mr. Ted
 9 Bernstein, but it's not against Simon
 10 Bernstein.
 11 And there are other claims throughout
 12 this complaint which show that while they're
 13 co-defendants, as discovery progresses, Your
 14 Honor, it can easily come to pass that there
 15 could be cross-claims between the co-defendants
 16 for indemnification or contribution depending
 17 on the degree of negligence that a jury may
 18 assign at some point.
 19 So we would ask that because of that, Your
 20 Honor, there is clear conflict of interest that
 21 would -- that arises because Mr. Ted Bernstein,
 22 should he become appointed as the either
 23 curator or successor personal representative,
 24 as an individual defendant and managing the
 25 affairs of the estate, there can easily be

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1 overlap.
 2 The estate could be used to pay his
 3 individual attorney's fees and it creates, I
 4 think, a whole host of conflicts that the
 5 children certainly, it seems to me, would be
 6 very weary of. Children of the other siblings
 7 of Mr. Simon Bernstein and the grandchildren.
 8 Now, in addition to that, Your Honor,
 9 there are emails which are attached to our
 10 response. And we would intend to offer those
 11 as exhibits today.
 12 The email shows a concerted effort by Ted
 13 Bernstein to keep assets that might otherwise
 14 be payable to the estate to go directly to the
 15 children of Simon Bernstein, specifically for
 16 the purpose of avoiding Mr. Stansbury as a
 17 creditor.
 18 And, as Your Honor knows, one of the jobs
 19 of the personal representative is to watch out
 20 for all of the interested parties in the
 21 estate, which would include Mr. Stansbury as a
 22 creditor. And the emails show that
 23 Mr. Stansbury is even mentioned by name.
 24 They filed a lawsuit up in Chicago in
 25 order to have the insurance company Heritage

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1 direct the proceeds of the life insurance
 2 policy on Simon Bernstein's life directly to
 3 the kids rather than to the estate.
 4 Right there that sets up a terrible
 5 conflict of interest based on his past conduct.
 6 THE COURT: Who is the beneficiary of the
 7 life insurance?
 8 MR. FEAMAN: Well, that's what's in
 9 dispute, Your Honor, because they claim that
 10 there is an insurance trust that set up the
 11 children as the beneficiaries. However, the
 12 insurance trust is lost and nobody can find it.
 13 So Heritage said, in the absence of a
 14 designated beneficiary, as you know, it should
 15 go to the estate.
 16 So there is an impleader action going on
 17 up in the Northern District of Illinois. And
 18 that is in direct response of Ted Bernstein
 19 trying to direct those -- and, by the way, it's
 20 not an insubstantial sum, Your Honor, it's
 21 \$1.7 million. My client's claims against the
 22 estate are that and more.
 23 So this is very significant that
 24 Mr. Bernstein would try to redirect that, which
 25 certainly he has the -- if he thinks he has the

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1 right to do, Your Honor.
 2 I don't blame Mr. Bernstein in his
 3 individual capacity to try to keep money out of
 4 the estate if he's a beneficiary of the estate,
 5 but once he crosses that line as the personal
 6 representative --
 7 THE COURT: You're kind of going out of
 8 opening statement to closing argument.
 9 MR. FEAMAN: Thank you, Your Honor. I'll
 10 move on.
 11 And then further, Your Honor, the law is
 12 such that Ted Bernstein has made
 13 misrepresentations to this Court and others in
 14 the past in connection with the Shirley
 15 Bernstein estate and in connection with this
 16 estate and other governmental authorities'
 17 evidence we would put on, which would show that
 18 Ted Bernstein is, outside of the conflict of
 19 interest, is not otherwise qualified based on
 20 his basic character in how he has conducted
 21 himself in the past, which, as Your Honor
 22 knows, since there is no preference, Your Honor
 23 is allowed to take in the totality of the
 24 situation as to whether Mr. Bernstein should be
 25 appointed as a personal representative.

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1 THE COURT: I've got it for opening
 2 statement purposes. I understand what you're
 3 saying. I'll let you present some evidence.
 4 MR. FEAMAN: Thank you.
 5 THE COURT: Do you have an opening,
 6 counsel, that you want to give?
 7 MR. GLASKO: No, sir.
 8 THE COURT: All right. So let me ask
 9 this. Mr. Pankauski, Mr. Feaman suggested
 10 through an oral motion, which I'm not going to
 11 act on, that there may be grounds to disqualify
 12 you from representing Ted Bernstein and sort of
 13 discussed it a little bit in open court.
 14 I've already said and he's required by the
 15 rule to put it in writing. He suggested that
 16 there may have been some prior representation
 17 of Eliot Bernstein.
 18 I want to do something right now that I
 19 think is appropriate. I'm going to recess for
 20 a few minutes and I want you to talk to Mr.
 21 Feaman outside so there is no record of this
 22 discussion, because I want, if a motion is
 23 filed, I want it to be in writing.
 24 But I think what I want you to do,
 25 Mr. Feaman, is tell him as much as you know

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1 about the situation. And then you, having
 2 heard it, let me know whether you still think
 3 it's appropriate to go forward with
 4 representing Ted or that there's a bona fide
 5 reason that under the conflict of interest
 6 rules you can't.
 7 MR. PANKAUSKI: Understood.
 8 THE COURT: So go ahead. Let's do that
 9 first and then we'll get back.
 10 Just let my bailiff know when you are
 11 ready.
 12 (Brief recess taken.)
 13 THE COURT: Okay. So were you able to
 14 have that informal conversation?
 15 MR. PANKAUSKI: Yes, Your Honor.
 16 MR. FEAMAN: Yes, Your Honor.
 17 THE COURT: So are you still going to go
 18 forward with that written motion?
 19 MR. FEAMAN: Yes.
 20 THE COURT: Okay. And is there a bona
 21 fide basis for the filing of the motion?
 22 MR. PANKAUSKI: No, Your Honor. In fact,
 23 I'm content to have you decide whether I'm
 24 disqualified right here and right now.
 25 THE COURT: Yeah, but I can't do that

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1 without it in writing. I just did a little
 2 research on that, because I think I've had this
 3 issue come up one time before that actually got
 4 this far. And I think, one, it has to be in
 5 writing because there is some verification
 6 requirements.
 7 MR. FEAMAN: Right.
 8 THE COURT: So the form of it is
 9 important.
 10 I dealt with this issue in a family law
 11 case, but it was long enough ago that I tried
 12 to pull the order that I wrote, but it's not
 13 imaged, so I can't get it, so I could get a
 14 better handle on what the standards were, given
 15 that the representation was that you had
 16 consulted with another party, that is Eliot
 17 Bernstein, in some form.
 18 And that was exactly the issue in this
 19 other case that I dealt with. If you want, I
 20 can tell you what the other case is in a few
 21 moments.
 22 The only thing I'm thinking about, though,
 23 is with a motion to disqualify, I'm not certain
 24 now whether it's appropriate to go forward on
 25 these motions that are left. And I think not,

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1 because that's what I also double-checked,
 2 because when a motion to disqualify comes,
 3 whether of counsel or of a court, if it was a
 4 judge, you have to stop and do that without
 5 question. It's a little bit less certain on a
 6 lawyer, but the word is that it's a better
 7 practice to dispose of those immediately.
 8 I mean, it has to be writing. I don't
 9 think they could ever get it written that
 10 quickly that I could get it served on
 11 everybody, so I'm going to have to hear those
 12 first before I can hear the remaining motions.
 13 What I will do is, if you tell me, Mr.
 14 Feaman, how quickly you can get it, I'll set
 15 this right away. I'll set it now. And I'll
 16 set the motion to appoint a curator for the
 17 same time.
 18 We're leaving enough time so we can hear
 19 the motion to disqualify. And then if it's
 20 granted, it's granted. And then we're not
 21 going to probably be able to go forward on
 22 their motion because Ted would be pro se. And
 23 there is no competing motions, correct?
 24 MR. FEAMAN: Ted is also represented by
 25 Mr. Rose here, so he is not without counsel.

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1 THE COURT: Okay. Well, Mr. --
 2 MR. FEAMAN: But I don't know if he's --
 3 THE COURT: Right, but he wants
 4 Mr. Pankauski for purposes of this motion.
 5 MR. FEAMAN: I'll file that motion
 6 tomorrow, Your Honor. I have no interest in
 7 trying to delay.
 8 THE COURT: Sure, I understand that. So
 9 let me just see how -- now we have this new
 10 calendaring system. Let me see how this thing
 11 works.
 12 Okay. All right. So, I mean, what I'm
 13 going to say now would take everyone to want to
 14 be able to do this. If you can literally get
 15 it done immediately, I have time tomorrow
 16 afternoon that opened, if everyone can do it.
 17 MR. FEAMAN: I could file it by
 18 5:00 o'clock tomorrow, Your Honor. I can't get
 19 it done. I've got a hearing on Thursday in
 20 another court I have to prepare for. I have a
 21 meeting with a client in Delray later today.
 22 THE COURT: All right. Let me look.
 23 Hold on. This is -- I don't have, they
 24 don't let me have a book anymore. They took it
 25 away from me. And now they make the computer

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1 calendar so small I can barely read it, so I'm
 2 trying.
 3 So how about the 27th, a week from
 4 Thursday? I have two hours I can give you.
 5 MR. PANKAUSKI: Your Honor, I'm leaving
 6 for an overseas vacation next Tuesday, so I'm
 7 out till about March 15th.
 8 THE COURT: All right. Then we've got to
 9 do this before. So let's see. Let me go back
 10 to the beginning.
 11 I know it's going to be inconvenient, Mr.
 12 Feaman, but it really would be helpful. And I
 13 understand it may be an abbreviated way of
 14 doing it. Maybe your assistant can help you.
 15 Is there any way you can get it done by the end
 16 of the day or first thing in the morning?
 17 I mean, everyone is here. That way I can
 18 do it tomorrow afternoon.
 19 MR. FEAMAN: Okay.
 20 THE COURT: Okay. Because, I mean, I just
 21 don't have time and now that I know that.
 22 MR. FEAMAN: We'll try to get it done by
 23 noon?
 24 THE COURT: Okay. How about that?
 25 MR. PANKAUSKI: That's fine, Your Honor.

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1 What time would you like us here tomorrow?
 2 THE COURT: Hold on, let me just go back.
 3 All right. Two-thirty tomorrow. And you
 4 have from 2:30 to 5:00 then. I'll expand the
 5 time that you had for today. So between the
 6 motion to disqualify and then the evidentiary
 7 hearing on the motion to appoint.
 8 MR. PANKAUSKI: Thank you, Your Honor.
 9 THE COURT: Okay. We'll do that all. We
 10 have two-and-a-half hours. Does that give you
 11 enough time?
 12 MR. PANKAUSKI: Yes, Your Honor.
 13 THE COURT: You think so, everyone?
 14 MR. FEAMAN: Yes, sir.
 15 MR. GLASKO: You said 1:30, Judge?
 16 THE COURT: Two-thirty.
 17 MR. GLASKO: Judge, may I have permission
 18 to appear by phone at the beginning of the
 19 hearing? I'm coming down at 1:00 o'clock.
 20 THE COURT: Sure. Yeah, if you'll just
 21 tell counsel, I'll just call you directly from
 22 my office phone until you get here. You don't
 23 even have to go on CourtCall.
 24 All right. So, Mr. Feaman, I'm going to
 25 give you my fax number. Fax me over a copy of

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1 your motion.
 2 Ready? (561)274-1418.
 3 And really it's right, because now that
 4 I'm looking, I have another case where there is
 5 a hearing, an evidentiary hearing set for next
 6 Monday, and there is a motion to disqualify
 7 counsel and I have that set for Thursday.
 8 And I remember why I did that, because I
 9 thought the better practice was to have that
 10 done before the hearing on which the matter is
 11 set.
 12 So, okay. So file that motion. And then
 13 I'll do both of them and everything else that
 14 we have to do on this tomorrow starting at
 15 2:30. Okay?
 16 All right. Thanks, everybody.
 17 MR. PANKAUSKI: Your Honor, I feel it's
 18 important that we disclose something to you.
 19 THE COURT: Okay.
 20 MR. PANKAUSKI: The reason the personal
 21 representatives resigned is because, in the
 22 course of this estate administration, evidently
 23 a fabricated document was discovered. A trust
 24 amendment was fabricated. And my sense is Your
 25 Honor wants to know about that.

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1 THE COURT: Well, I might. And I think
 2 that was brought by Eliot to my attention at
 3 some point before today; isn't that true?
 4 MR. BERNSTEIN: No. Well, part of it is,
 5 but there was an admission to authorities by
 6 Mr. Tescher of alleged, if you believe anything
 7 they say anymore, but that came out that there
 8 was another document on top of the forged one
 9 that also tried to switch beneficiaries.
 10 Which, by the way, Your Honor, Ted's
 11 centrally involved in picking all these
 12 attorneys who are bleeding this --
 13 THE COURT: Well, that's what tomorrow's
 14 hearing is. Let's not pickpocket yet.
 15 Okay. Well, so, I mean, prior hearings
 16 reveal the issue of forgery, I don't know what
 17 documents, I don't remember them, that existed.
 18 It may be more than one.
 19 MR. PANKAUSKI: But I'm learning from
 20 Mr. Rose and Mr. Bernstein, Ted, is Your Honor
 21 dealt with a back-dated notary clause.
 22 THE COURT: Okay.
 23 MR. PANKAUSKI: There is another instance
 24 of a trust amendment, an entire trust
 25 amendment, that was evidently fabricated that

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1 was disclosed to my client back in January.
 2 THE COURT: All right.
 3 MR. PANKAUSKI: And so my sense is that's
 4 one of the things that this Court wants to know
 5 about.
 6 THE COURT: Well, okay. I'll hear
 7 anything that you think on the issue of -- I
 8 mean, everyone is in agreement that now that
 9 Tescher and Spallina are off, someone has to
 10 take their place, true?
 11 MR. PANKAUSKI: Yes, Your Honor.
 12 THE COURT: I mean, we're not going to
 13 have a vacuum there. So, I mean, this part
 14 isn't too complicated. The issues are Ted,
 15 Eliot, or a curator who is not related to those
 16 two?
 17 MR. PANKAUSKI: Yes, Your Honor.
 18 THE COURT: So we can get that done
 19 tomorrow afternoon.
 20 Okay. Thanks. See you then.
 21 MR. GLASKO: Judge, --
 22 THE COURT: Yes.
 23 MR. GLASKO: -- I'm sorry, I'd like to
 24 ask. I only have the motions that were heard
 25 today. I'd just like to ask counsel -- I'll

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1 give you my card, because I'd like to ask
2 counsel to deliver the motions for tomorrow to
3 me tonight, if you'd be so kind.

4 MR. PANKAUSKI: Well, he's filing,
5 Mr. Feaman is filing the motion for tomorrow.

6 MR. GLASKO: Whatever is being heard
7 tomorrow.

8 THE COURT: Yeah, give him an extra copy
9 of the motion -- here, take mine.

10 MR. PANKAUSKI: I've got one, Judge.

11 THE COURT: The motion for appointment you
12 can take. I have Mr. Feaman's response. Do
13 you have that already?

14 MR. GLASKO: I do not.

15 THE COURT: They'll give that to you.

16 Thank you very much.

17 (The hearing was adjourned.)
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
 IN AND FOR PALM BEACH COUNTY, FLORIDA
 PROBATE DIVISION
 CASE NO. 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner,

vs.

TESCHER & SPALLINA, P.A., (and all
 parties, associates and of counsel);
 ROBERT L. SPALLINA (both personally
 and professionally); DONALD R. TESCHER
 (both personally and professionally);
 THEODORE STUART BERNSTEIN
 (as alleged personal representative, trustee,
 successor trustee) (both personally and
 professionally); et al.,

Respondents.

- - -
 PROCEEDINGS BEFORE THE
 HONORABLE MARTIN H. COLIN
 VOLUME II
 - - -

DATE: FEBRUARY 19, 2014

TIME: 2:30 P.M. - 5:03 P.M.

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HONORABLE MARTIN H. COLIN
VOLUME II
- - -

DATE: FEBRUARY 19, 2014

TIME: 2:30 P.M. - 5:03 P.M.

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 ALSO PRESENT:
 Ted S. Bernstein
 William Stansbury
 Candice Bernstein

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1 BE IT REMEMBERED, that the following
 2 proceedings were taken in the above-styled cause
 3 before Judge Martin H. Colin, at the South County
 4 Courthouse, 200 West Atlantic Avenue, Courtroom 2,
 5 City of Delray Beach, County of Palm Beach, State of
 6 Florida, beginning at 2:30, on Wednesday, the 19th
 7 day of February, 2014, to wit:
 8 ---
 9 THE COURT: Okay. Thanks. Be seated.
 10 Okay. So we're back on the Estate of
 11 Simon Bernstein, 2012CP004391. Let the record
 12 reflect counsel is present following
 13 yesterday's hearing and Mr. Feaman has now
 14 filed the verified motion to disqualify counsel
 15 which we're going to first hear.
 16 So Mr. Feaman, you're up.
 17 MR. FEAMAN: Thank you, Your Honor.
 18 MR. PANKAUSKI: Excuse me, Your Honor.
 19 Because I have not been able to provide a written
 20 response and because you were kind enough to give
 21 Mr. Feaman an opening statement yesterday, may I
 22 be briefly heard?
 23 THE COURT: Well, hold on. Let him give his
 24 opening statement and then you.
 25 Go ahead.

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1 MR. FEAMAN: Thank you, Your Honor.
 2 Your Honor, we're traveling, as Your Honor
 3 is aware, under Rule 4-1.18 of the Rules of
 4 Professional Conduct dealing with prospective
 5 clients, which states that a person who
 6 discusses with a lawyer the possibility of
 7 forming a client-lawyer relationship with
 8 respect to a matter is a prospective client, at
 9 subpart (a). And then subpart (c), Your Honor,
 10 a lawyer subject to subdivision (b) shall not
 11 represent a client with an interest materially
 12 adverse to those of a prospective client in the
 13 same or substantially related matter.
 14 In this case, Your Honor, we have filed
 15 our verified motion to disqualify counsel as
 16 opposing counsel to Mr. Bernstein in this
 17 proceeding, which we do have a right to do.
 18 And in that verified motion it sets forth that
 19 there was indeed a relationship formed between
 20 Mr. Pankauski and the Bernsteins as
 21 prospective -- specifically Eliot Bernstein --
 22 as a prospective client.
 23 The law, Your Honor, as you know, states
 24 that, under Florida law, attorneys must avoid
 25 appearances of professional impropriety and any

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1 doubt is to be resolved in favor of
 2 disqualifications.
 3 We respectively submit that based upon the
 4 papers submitted that, in fact, the
 5 relationship as prospective counsel was -- and
 6 prospective client -- was formed. We attach as
 7 Exhibit A to the motion an e-mail which, in
 8 fact, memorializes the existence of the
 9 relationship. And we would then respectfully
 10 request, through our motion, that there be a
 11 disqualification in this case. I don't know
 12 what opposing counsel's arguments are going to
 13 be, so I will reserve after I hear.
 14 THE COURT: Okay. Mr. Pankauski.
 15 MR. PANKAUSKI: Thank you, Your Honor. Good
 16 afternoon. So we're here today -- and I'm going
 17 to try to be concise with my opening statements --
 18 what I'm going to try to do is talk about the
 19 burden of proof, the standards which I believe are
 20 to exist under 4-1.18, because I don't see any
 21 published decisions on this rule. I know our rule
 22 in Florida is a little bit different than the
 23 model rules that the ABA has. I'm also going to
 24 try to concisely tell you what the evidence is
 25 going to show.

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1 And then, in closing, I'd just like to
 2 address three points made by opposing counsel.
 3 And thank you for this opportunity to be heard.
 4 This is a tire kicker case. This is a case
 5 that the litigators, trial attorneys, who get
 6 lots of calls from prospective clients would
 7 refer to as, you know, what happens when
 8 somebody calls up a number of attorneys and
 9 says, hey, would you take my case, and
 10 confidential information is not relayed, and
 11 then that attorney ends up being involved in a
 12 case. Should an attorney be removed from a
 13 case -- in a tire kicking case -- because
 14 somebody is calling up and kicking the tires,
 15 should Your Honor, which you have the absolute
 16 discretion to do, impose your discretion to
 17 prohibit Mr. Ted Bernstein from having the
 18 counsel of his choice. So let me say at the
 19 beginning that Mr. Stansbury's counsel said
 20 that he has a right to file a motion to
 21 disqualify my firm. We contest that, Your
 22 Honor. That's not accurate. A third party,
 23 such as a creditor like Mr. Stansbury, does not
 24 have standing to determine whether Mr. Ted
 25 Bernstein can hire someone as his or her

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1 attorney.
 2 THE COURT: Okay. So stop for a second. I
 3 just want to make sure I'm looking at something --
 4 because I agree time was quick on this. So in the
 5 packet that I received, the verified motion to
 6 disqualify counsel, it's brought by the
 7 petitioner, William Stansbury, as a creditor, an
 8 interested person in the estate, and it's -- it's
 9 verified by Eliot Bernstein and Candice Bernstein.
 10 But it's not brought by them. It's brought only
 11 by William. So -- and William doesn't verify it.
 12 So the moving party doesn't verify the pleading.
 13 So under the rule that governs these type of
 14 pleadings who has to -- two questions -- who has
 15 to verify the motion; and does the motion have to
 16 be brought by and/or in behalf of the alleged
 17 aggrieved individual?
 18 MR. FEAMAN: Thank you, Your Honor. First
 19 with regard to the verification. The verification
 20 has to state that I declare that the facts alleged
 21 are true. And Mr. Stansbury was not in a position
 22 to verify that because it would have been through
 23 secondhand information. So we thought that the
 24 proper verification should be signed by the people
 25 who actually are the prospective clients against

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1 whom we say --
 2 THE COURT: Now, I mean, they may be -- that
 3 is Eliot and Candice -- may be witnesses. But
 4 from the motion itself, the moving party is
 5 William. Eliot has not filed a motion. And so --
 6 I didn't know this until I saw the pleading -- so
 7 William has filed a motion. He is seeking to
 8 disqualify Mr. Pankauski from representing Ted
 9 Bernstein. Eliot has not filed any action on
 10 that. Has made no request for such a
 11 disqualification. And William hasn't even signed
 12 the pleading that he filed. So let me take a look
 13 at the rule for a second.
 14 MR. FEAMAN: Sure. I also have case law with
 15 regard to whether William can bring it as opposing
 16 counsel.
 17 THE COURT: As opposing party?
 18 MR. FEAMAN: As opposing party, yes, sir.
 19 THE COURT: Okay. So -- I mean, correct me
 20 if I'm wrong, the rule that is both 4-1.8 and
 21 4-1.9 are rules of professional conduct that
 22 advise about what lawyers can do under
 23 circumstances that may be involved here. But it
 24 doesn't really speak to the remedy. Both of you
 25 agree with that?

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1 MR. PANKAUSKI: Yes, Your Honor.
 2 THE COURT: So either of you have cases that
 3 speak to the issues of whether William, as the
 4 creditor, not as the purported client, who has an
 5 alleged conflict of interest with Mr. Pankauski,
 6 can bring this action. And secondly, whether --
 7 whether I can disqualify Mr. Pankauski without
 8 Eliot seeking that to happen, and by William as a
 9 creditor, interested person seeking that, and
 10 whether I can do it based upon a verified motion
 11 not signed by William. Those are the three issues
 12 I see on the surface.
 13 MR. PANKAUSKI: Yes, Your Honor.
 14 THE COURT: You want to address that first?
 15 MR. FEAMAN: Sure. I have the burden, so
 16 I'll go first. First, I know there is a rule that
 17 when you seek to disqualify a judge, that it must
 18 be verified.
 19 THE COURT: Right. But the -- and in that
 20 area, the rule speaks out the procedure.
 21 MR. FEAMAN: Right.
 22 THE COURT: Here, the procedure in the Bar
 23 Lawyer's Rules of Professional Conduct, it doesn't
 24 speak to it. So I assume the case law speaks to
 25 it.

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1 MR. FEAMAN: To my knowledge, the rules are
 2 silent as to the procedure.
 3 THE COURT: So what does the case law say the
 4 procedure is?
 5 MR. FEAMAN: We don't have a case law as to
 6 the procedure. We have it verified to show that
 7 these are true facts on their face being brought
 8 before the court. We didn't find a case that sets
 9 forth the procedure of how this is brought, other
 10 than this should be an evidentiary hearing.
 11 THE COURT: Okay.
 12 MR. FEAMAN: Now, with regard to
 13 Mr. Stansbury bringing -- being the moving party
 14 instead of Mr. Eliot Bernstein. We attached the
 15 case to our motion, which was the Smathers case
 16 which --
 17 THE COURT: Brent versus Smathers?
 18 MR. FEAMAN: Brent versus Smathers, yes, Your
 19 Honor, 529 So. 2d. 1267. And on Page 2 of that
 20 decision, Page 2 as copied to you, there is a
 21 discussion of Rule 4-1.9. And then at the bottom
 22 of the left-hand column, the last sentence, it
 23 says as to the law firm's second argument, the
 24 comments to Rule 4-1.7 states that: Although
 25 questions involving conflicts of interest are

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1 primarily the responsibility of the lawyer
 2 undertaking the representation, opposing counsel
 3 may properly raise the issue, as is the case here.
 4 That's the authority that we're relying
 5 upon that we can bring it on behalf of
 6 Mr. Stansbury.
 7 THE COURT: So in this Brent case -- let me
 8 see who is who. Want to be heard on that matter,
 9 Mr. Pankauski?
 10 MR. PANKAUSKI: Yes, Your Honor. Thank you.
 11 The Brent v. Smathers case is outdated. It's a
 12 1988 case. That pre-dates the 2009 change to
 13 Florida Rule 4-1.18. It also is traveling under
 14 the wrong rule of professional conduct. 4-1.9 is
 15 not applicable here. We both agree it's 4-1.18
 16 dealing with a prospective client. The standards
 17 are different for a prospective client than an
 18 existing attorney-client relationship.
 19 THE COURT: Okay. Let me -- okay. Let me
 20 just look at that for one second. For that to be
 21 true, Mr. Feaman, it would have to be the position
 22 by Eliot, through the evidence, or Eliot
 23 Bernstein, that there was no lawyer-client
 24 relationship between him and Mr. Pankauski. Is
 25 that the case?

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1 MR. FEAMAN: Was he formerly retained, is
 2 that your question?
 3 THE COURT: You're using the word formal, I'm
 4 not.
 5 MR. FEAMAN: All right.
 6 THE COURT: The cases don't use the word
 7 formal.
 8 MR. FEAMAN: As defined by the rules, he's a
 9 prospective client. The rules make a distinction.
 10 MR. PANKAUSKI: That's 4-1.18.
 11 THE COURT: So you don't think Rule 4-1.9
 12 applies?
 13 MR. FEAMAN: I do. Because it references
 14 4-1.9 in part B of 4-1.18, which states that even
 15 when no client-lawyer relationship ensues, a
 16 lawyer who has had discussions with a prospective
 17 client shall not use or reveal information learned
 18 in the consultation, except as Rule 4-1.9 would
 19 permit. And so a conflict under 4-1.9 would apply
 20 to a prospective client as defined under 4-1.18.
 21 THE COURT: Okay. All right. What about --
 22 Mr. Pankauski, what's your position on whether
 23 this could be brought by the creditor and not by
 24 Eliot Bernstein.
 25 MR. PANKAUSKI: He's not permitted -- the

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1 creditor is not permitted to bring this action.
 2 The authority for that -- let me state what the
 3 authority is. Privity is required for someone to
 4 try to go up to an attorney and say you can't
 5 represent Ted Bernstein. There is no privity
 6 here. There is no attorney-client relationship
 7 between my firm and the creditor, Mr. Stansbury.
 8 The authority for that is a 2012 Second District
 9 case called THI Holdings, Thomas Howard Indigo
 10 Holdings, LLC. And it sets forth that privity is
 11 required. It involved a motion to disqualify, a
 12 motion for pro hac vice. And it says here as a
 13 matter of undisputed facts, there is no privity
 14 between the estate and Balassa or his firm. And
 15 it goes on to talk about that. And then it says
 16 even if the estate could convince this court that
 17 it had standing to raise the disqualification
 18 issue, it cannot establish the legal requirements
 19 for disqualification.
 20 THE COURT: So here's the thing that's
 21 concerning me, Mr. Feaman. The allegation,
 22 looking at the motion, is that there was -- I'm
 23 using this expression broadly -- some legal
 24 dealings between Eliot Bernstein and the Pankauski
 25 firm. That's what you allege, correct?

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1 MR. FEAMAN: Correct.
 2 THE COURT: So -- and Eliot Bernstein has
 3 not -- and then we also know that Ted Bernstein
 4 has hired Mr. Pankauski, that same lawyer that
 5 Eliot says he had legal dealings with. True?
 6 MR. FEAMAN: True.
 7 THE COURT: So here's what I'm just not
 8 following you -- almost like a matter of logic.
 9 With Eliot not complaining, how can a creditor or
 10 any other outside person who doesn't claim a
 11 conflict of interest -- say I don't want
 12 Mr. Pankauski to continue to represent Ted when
 13 Eliot has not filed the motion complaining because
 14 Eliot is the other purported either prospective or
 15 former client, depending upon which rule you look
 16 at -- who has a right to either complain or not.
 17 So I'm sure it's not the case in reality, but if
 18 Eliot didn't complain -- I mean, it could be that
 19 Eliot is taking a position, you know, whatever I
 20 did with Mr. Pankauski and his firm, you know, it
 21 started where it started, ended where it ended,
 22 and, you know, it may be that Ted hired him and
 23 that's okay with me. And I'm not asking that
 24 Mr. Pankauski not represent Ted because of some
 25 conflict with me, Eliot. I don't -- I just don't

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1 understand how William Stansbury can say there is
 2 a conflict that Eliot doesn't say exists.
 3 MR. FEAMAN: Mr. Stansbury is harmed as a
 4 result of the apparent dereliction of
 5 Mr. Pankauski's duties to Mr. Eliot Bernstein
 6 because --
 7 THE COURT: Even if Eliot doesn't complain?
 8 MR. FEAMAN: Yes, sir.
 9 THE COURT: Okay. Show me -- I need a case
 10 that says that that's possible. Because that's
 11 what I don't see. Eliot, I think, can complain,
 12 and I'm not sure that it's -- which rule applies.
 13 MR. FEAMAN: And he may yet complain, we
 14 don't know. And I can't --
 15 THE COURT: Right.
 16 MR. FEAMAN: -- speak for Eliot.
 17 THE COURT: I know. Eliot is representing
 18 himself.
 19 MR. FEAMAN: Nor do I prepare pleadings for
 20 Mr. Bernstein.
 21 THE COURT: Eliot went so far as to sign your
 22 verification, but it's not his motion. That's one
 23 problem. But also -- I'm almost positive because
 24 of some prior cases I had that the person who has
 25 to complain is -- about a lawyer representing

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1 someone else, and in this case it's Mr. Pankauski
 2 continuing to represent Ted Bernstein, is the
 3 person who purportedly is the benefactor of these
 4 rules as an either prospective or former client.
 5 But if he says no -- if he doesn't seek
 6 disqualification, I'm not sure how someone else
 7 can -- has an interest, under the cases that I
 8 read, for that to happen. Let me just look here
 9 if there is a case I just saw in my research.
 10 MR. FEAMAN: The court --
 11 THE COURT: I did an extensive case right on
 12 Rule 4-1.9, very similar to this, and it was --
 13 everyone said it was that rule, not the
 14 prospective rule. Although, from reading your
 15 motion, it's almost the identical type of case.
 16 And both lawyers in that case said, though, that
 17 it was the 4-1.9 that applied not the 4-1.8. But
 18 the moving party was the alleged aggrieved party
 19 who said that they -- that the other lawyer had a
 20 conflict of interest because the other lawyer
 21 here, Mr. Pankauski, had performed some
 22 lawyer-client services, and there was other
 23 information that led to the -- because if there is
 24 no attorney-client relationship that is complained
 25 about that Eliot says was breached, I'm not sure

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1 that William has standing. And I just -- I mean,
 2 if you have a case that says he does...
 3 MR. FEAMAN: Only thing I have is the comment
 4 to 4-1.7 --
 5 THE COURT: Okay.
 6 MR. FEAMAN: -- which deals with conflicts of
 7 interest.
 8 THE COURT: Sure. Let me see.
 9 MR. FEAMAN: And it's at the end in the
 10 book -- I don't know if you have the book.
 11 THE COURT: I have the book, yeah.
 12 MR. FEAMAN: On Page -- I have the 2013
 13 edition.
 14 THE COURT: Okay.
 15 MR. FEAMAN: Page 1985.
 16 THE COURT: Wait a minute. My Rule 4-1.8 the
 17 comments are on a different page, but what's the
 18 heading of the comment?
 19 MR. FEAMAN: Conflict charge by an opposing
 20 party.
 21 THE COURT: Okay. Got that. Let me read it.
 22 MR. FEAMAN: It says, the second sentence, in
 23 litigation a court may raise the question when
 24 there is reason to infer that the lawyer has
 25 neglected the responsibility.

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1 THE COURT: Okay. Let me read the entire --
 2 what subsection of 4-1.8 do you say applies,
 3 Mr. Feaman?
 4 MR. FEAMAN: Well, our motion speaks to
 5 4-1.18.
 6 THE COURT: Eighteen. Okay. Say that again
 7 4 --
 8 MR. FEAMAN: 4-1.18.
 9 THE COURT: Let me look at that, it's
 10 different.
 11 Okay. That's duties to prospective
 12 client. Let's read.
 13 MR. FEAMAN: Right.
 14 THE COURT: Let me read that.
 15 MR. FEAMAN: Okay.
 16 THE COURT: Let me look at the comments for a
 17 second.
 18 Okay. So I think there is maybe a little
 19 overlap here. If Eliot Bernstein is a
 20 prospective client, the way the rule starts,
 21 there is a focus about when he purportedly
 22 consults with Mr. Pankauski and he's a
 23 prospective client, if Mr. Pankauski has some
 24 lawyer-client relationship with someone else at
 25 the time, then there are rules that say what he

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1 can do or not do. That's not what's involved
 2 here. So here when -- Eliot was first in time,
 3 right?
 4 MR. PANKAUSKI: Yes, Your Honor.
 5 THE COURT: You agree with that?
 6 MR. FEAMAN: Yes.
 7 THE COURT: So Eliot sees Mr. Pankauski, or
 8 his office does what he does -- we may be talking
 9 about that in a few moments. And then the
 10 question becomes where Mr. Pankauski then
 11 continues to -- or chooses to represent someone
 12 else, Ted Bernstein, it looks like Rule 4-1.18,
 13 subsection (c) applies. A lawyer subject to
 14 subdivision (b) shall not represent a client with
 15 interest materially adverse to those of a
 16 prospective client in the same or substantially
 17 related matter. And it goes on to talk about
 18 that.
 19 So is that the rule that you say applies?
 20 MR. FEAMAN: Yes, Your Honor.
 21 THE COURT: You agree that rule would apply?
 22 MR. PANKAUSKI: Yes, Your Honor.
 23 THE COURT: I think Rule 4-1.9, which is the
 24 other conflict of interest rule, is where --
 25 arises where there actually is a situation where

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1 Eliot Bernstein is then called a former client,
 2 and then Mr. Pankauski would represent Ted. And
 3 then subsection (a) there almost uses the exact
 4 same language.
 5 So I'm not sure if Eliot is a former
 6 client or a prospective client, but if he's
 7 first in line, then the rule is almost
 8 identical about when Mr. Pankauski then can
 9 represent Ted Bernstein in the same or
 10 related -- substantially related matter. The
 11 language is the same, true?
 12 MR. PANKAUSKI: Yes, Your Honor.
 13 THE COURT: You agree?
 14 MR. FEAMAN: True.
 15 THE COURT: All right. So let me get passed,
 16 though, the procedural aspect as to whether
 17 William can bring that without -- William
 18 Stansbury -- can bring this complaint in
 19 connection with the motion to disqualify when
 20 Eliot doesn't. If Eliot is the purported party
 21 who is harmed by the potential conflicts of
 22 interest, either as a prospective client of
 23 Mr. Pankauski or former client, if it got that
 24 far.
 25 MR. FEAMAN: Our argument, Your Honor, on

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1 behalf of Mr. Stansbury, is that because Eliot
 2 Bernstein's interests are more closely aligned
 3 with Mr. Stansbury's, and are clearly adverse to
 4 Ted Bernstein, and Mr. Stansbury's interests are
 5 clearly adverse to Ted Bernstein, that if Eliot
 6 Bernstein transmitted information as a prospective
 7 client to the attorney who's now Ted Bernstein's
 8 lawyer, and we're adverse to him, it's our
 9 position that we're harmed as a result of that.
 10 THE COURT: Well -- but it's not harm
 11 that's -- the rule is not a harm. The rule is a
 12 conflict of interest. And the conflict of
 13 interest has to be between Eliot and Ted. I'm not
 14 sure how it could be otherwise.
 15 MR. FEAMAN: Yes, as a result of that
 16 conflict of interest --
 17 THE COURT: Well, okay. But I still have
 18 to --
 19 MR. FEAMAN: -- we're hurt.
 20 THE COURT: But if Eliot says -- because
 21 there could be waivers, says here in the rule --
 22 4-1.9 says a lawyer who has formerly represented a
 23 client shall not thereafter represent another
 24 person, okay, unless -- and then there's unleses
 25 [sic] -- and one of those things are clearly in

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1 this case Eliot could not complain about it.
 2 MR. ELIOT BERNSTEIN: May I interject, Your
 3 Honor?
 4 THE COURT: You're objecting?
 5 MR. ELIOT BERNSTEIN: No, can I interject?
 6 THE COURT: What do you want to say?
 7 MR. ELIOT BERNSTEIN: I politely asked him
 8 and told him that he was conflicted, and I felt
 9 harmed by it.
 10 THE COURT: That's evidence, though. That's
 11 potential evidence you want to interject, but you
 12 haven't filed this motion.
 13 MR. ELIOT BERNSTEIN: I didn't learn that
 14 until yesterday, so if I have to, I'll do another
 15 day.
 16 THE COURT: So let me ask this. If -- the
 17 motion is filed, it's in written form, it's filed
 18 by Mr. Stansbury. I think it needs to be joined,
 19 if not independently, at least joined by Eliot
 20 Bernstein. So what's your position -- and that's
 21 clearly what Eliot wants to do, he just doesn't
 22 know it yet. What about that, Mr. Pankauski? Can
 23 I treat this motion and go forward based upon it
 24 being joined by Eliot?
 25 MR. PANKAUSKI: No, Your Honor. Mr. Eliot

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1 Bernstein received notice of that. He's chosen to
 2 go without counsel. He's chosen not to seek any
 3 affirmative relief.
 4 THE COURT: But that -- that's to the case.
 5 But I'm talking about the motion to disqualify
 6 you.
 7 MR. PANKAUSKI: Yes, that's what I am
 8 speaking about.
 9 THE COURT: So I mean -- I could do one of
 10 two things. I can tell Eliot go over to the
 11 library and start writing out -- Xeroxing this
 12 motion, sign it yourself, and bring it in, and
 13 then, you know --
 14 MR. PANKAUSKI: You just want an oral joinder
 15 right now?
 16 THE COURT: Yeah --
 17 MR. PANKAUSKI: That's fine.
 18 THE COURT: -- that's what I'm getting at.
 19 MR. PANKAUSKI: Yes. Sorry, Judge.
 20 THE COURT: Okay. What's your position on
 21 that?
 22 MR. PANKAUSKI: But Mr. Stansbury can't do
 23 it. Eliot could do it.
 24 THE COURT: I think Eliot needs to be the
 25 complaining party. Now, I'm not saying you can't

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1 participate as counsel to maybe help steer the
 2 evidence. I'm probably thinking that would be
 3 okay, but I think we need Eliot to join.
 4 Mr. Pankauski doesn't have an objection. What do
 5 you say?
 6 MR. FEAMAN: I have no objection to Mr. Eliot
 7 Bernstein joining. I'm just not going to be in a
 8 position of encouraging him to do something and
 9 violate my neutrality.
 10 THE COURT: You are not -- you don't
 11 represent him.
 12 MR. FEAMAN: That's correct.
 13 THE COURT: So Eliot is pro se.
 14 MR. FEAMAN: Correct.
 15 THE COURT: You know, there is a burden that
 16 is on Eliot to start, but since he's joining your
 17 motion, I'm going to allow -- just because for
 18 judicial economy and so we don't have to like come
 19 back on this matter and everyone is ready to go
 20 forward -- for you to help, almost be second chair
 21 counsel, standby counsel, although, I know you
 22 represent William, to just help bring out the
 23 evidence. So I'm going to allow that.
 24 Okay. So Eliot, this is your motion.
 25 MR. ELIOT BERNSTEIN: Okay.

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1 THE COURT: So come on up and sit here so I
 2 can look at you and Judge your credibility when I
 3 hear things that are going on. So sit right there
 4 in the middle.
 5 So whether -- again, I'm not -- I'm not
 6 sure, I won't know til the end, what rule I
 7 think this comes under, but it looks like it's
 8 either 1-9 -- or 1.9 or 1.18, but it sounds
 9 like it's one of those two.
 10 So, okay, so you're up first.
 11 MR. FEAMAN: Thank you. I would call
 12 Mr. Eliot Bernstein to the stand.
 13 THE COURT: I figured that would be first.
 14 Okay. Come on, Eliot.
 15 MR. PANKAUSKI: Opening statements.
 16 THE COURT: He has a right to opening. So
 17 have a seat here and I'll let Mr. Pankauski finish
 18 his opening.
 19 MR. PANKAUSKI: Thanks, Judge. And I --
 20 okay. Thank you, Your Honor. So concisely, we
 21 are traveling -- and I agree with Mr. Stansbury's
 22 counsel -- under 4-1.18. The evidence is going to
 23 show that my firm never had an attorney-client
 24 relationship with Mr. Eliot Bernstein.
 25 And if I may, let's just -- we've dealt

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1 with the standing issue of Mr. Stansbury. You
 2 know, I'm of the position he does not have
 3 standing. I'm also of the position that Eliot
 4 lacks standing to participate in this estate
 5 administration. He's not a beneficiary under
 6 the decedent's will. He's not a beneficiary
 7 under the decedent's revocable trust.
 8 I do recognize that I'm coming in late to
 9 this estate administration.
 10 Eliot Bernstein is not an interested
 11 person in this estate. He shouldn't even be
 12 here.
 13 So I need to --
 14 THE COURT: What is Eliot Bernstein other
 15 than the brother of Ted?
 16 MR. PANKAUSKI: Nothing.
 17 THE COURT: Okay.
 18 MR. PANKAUSKI: I mean, if this was a
 19 guardianship, he may have standing to come in and
 20 participate in the administration of his dad's
 21 person and property, but it's an estate. He
 22 totally lacks standing. And because he lacks
 23 standing, he doesn't -- he's not an interested
 24 person and can't come in and tell Ted Bernstein
 25 who he can hire as an attorney for an estate

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1 administration.
 2 And that's my third point, Your Honor.
 3 This isn't an adverse lawsuit. This isn't a
 4 personal injury case. Mr. Ted Bernstein has
 5 asked Your Honor if he can administer this
 6 estate. He wants to be a fiduciary. As he is
 7 a fiduciary --
 8 THE COURT: Okay. But the participation of
 9 Ted is not questioned. It's whether you can do it
 10 for him.
 11 MR. PANKAUSKI: Understood.
 12 THE COURT: So Ted is -- no one is suggesting
 13 Ted is not eligible to request that he be a PR or
 14 curator. I mean, that wasn't objected to
 15 yesterday.
 16 MR. PANKAUSKI: Understood. And so, if I
 17 may, let me go to the standard that we're
 18 traveling under today and what we should be doing
 19 here. Because we are going to introduce evidence
 20 that there was no attorney-client relationship.
 21 Evidence is going to be introduced that there was
 22 no confidential information that Eliot Bernstein
 23 conveyed to my law firm. The evidence is going to
 24 show that he called up trying to find an attorney
 25 to sue Don Tescher for malpractice regarding some

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1 estate matters of his parents.
 2 I'm going to testify about
 3 Mr. Bernstein's -- excuse me -- about
 4 Mr. Stansbury's verified motion. I'm going to
 5 testify as to what Mr. Stansbury's counsel told
 6 me out there yesterday when you asked me to
 7 step out. And I'm going to demonstrate the
 8 amazing amount of inconsistencies in this
 9 fiction that we had an attorney-client
 10 relationship, or there is some type of
 11 confidential information that is going to be
 12 adverse to Mr. Eliot Bernstein.
 13 So it's a three-fold test or three-prong
 14 test, Your Honor. For you to disqualify this
 15 firm -- for you to say Ted Bernstein, you can
 16 not hire the Pankauski law firm for estate
 17 administration. You would have first to make a
 18 finding of fact that the interests of Ted
 19 Bernstein are materially adverse, not just
 20 adverse, but materially adverse to the
 21 prospective client, Eliot Bernstein.
 22 The second thing that you would need to
 23 find is that I received confidential
 24 information from Mr. Eliot Bernstein.
 25 And then the third thing that you would

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1 have to find is that I am going to use that
 2 information, that confidential information, to
 3 the disadvantage of Mr. Eliot Bernstein in an
 4 estate.
 5 THE COURT: That you are going to or could?
 6 I mean, it couldn't be going to --
 7 MR. PANKAUSKI: That I could. Thank you,
 8 Your Honor.
 9 So that's the standard under 4-1.18. What
 10 does our Fourth District say about this?
 11 THE COURT: I kind of want opening and not
 12 closing. So I got that part.
 13 MR. PANKAUSKI: Okay. So the standard that I
 14 would direct our attention to is the Coolis
 15 (phonetic) case. You would need to find -- and
 16 again, it's a finding of fact -- that I had actual
 17 knowledge of material confidential information.
 18 What the Fourth has described as protected
 19 information. The burden is on Eliot.
 20 Finally, because disqualification of a
 21 party's counsel is such an egregious
 22 punishment, that we can't resort to
 23 speculation. Mr. Eliot Bernstein needs to
 24 prove by a greater weight of the evidence those
 25 three prongs that I described in 4-1.18.

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1 Thank you, Your Honor.
 2 THE COURT: Okay. All right. Let's get the
 3 evidence. Then we can talk about the law once we
 4 see what the evidence is.
 5 Okay. Raise your right hand.
 6 (Thereupon, ELIOT BERNSTEIN was duly sworn
 7 by the court)
 8 DIRECT EXAMINATION
 9 BY MR. FEAMAN
 10 Q Thank you. Please state your name.
 11 A Eliot Ivan Bernstein.
 12 Q Your residence address?
 13 A 2753 NW 34th Street, Boca Raton, Florida.
 14 Q And you are the son of the late Simon
 15 Bernstein?
 16 A I am.
 17 Q And you reside in Florida presently?
 18 A I do.
 19 Q And are your children beneficiaries under the
 20 estate as it presently is structured?
 21 A I'm not a hundred percent sure at this point.
 22 Q Okay.
 23 A I believe I am.
 24 THE COURT: So do this, though. That may be
 25 true, but let's make sure you're asked a question,

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1 don't volunteer, because that's important. Okay.
 2 THE WITNESS: Sure.
 3 BY MR. FEAMAN
 4 Q Is your brother Ted Bernstein presently a
 5 beneficiary under the trust established by the estate
 6 documents, if you know?
 7 A I don't believe so.
 8 Q That would be Ted Bernstein?
 9 A That would be.
 10 Q And are your interests with Ted Bernstein
 11 adverse in connection with the estate of Simon Bernstein?
 12 A Yes, sir.
 13 Q And how so?
 14 A Well, I'm pursuing Ted in a number of legal
 15 actions, criminal actions, for --
 16 THE COURT: So focus on the question. Okay.
 17 He didn't ask anything about criminal actions.
 18 So, you know, you're a witness now --
 19 THE WITNESS: We're adverse to each other.
 20 THE COURT: You need to pay -- let me
 21 finish -- you need to pay attention carefully to
 22 the question. Listen. Let me finish.
 23 THE WITNESS: Uh-huh.
 24 THE COURT: Okay. And not ramble outside the
 25 scope of the question. Because Mr. Feaman's

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1 questions are designed to be tailored for this
 2 case.
 3 Go ahead.
 4 BY MR. FEAMAN
 5 Q Thank you, Your Honor.
 6 How is your interest in the estate of your
 7 father directly, or through the trust, established by
 8 your father's will, in conflict with that of Ted
 9 Bernstein?
 10 A I believe we're at conflict because Ted and I
 11 differ if Ted and his children are part of the estates.
 12 Q Okay. And what do you believe -- what is your
 13 understanding, as you sit here today, as to whether Ted
 14 and his children -- whether they should inherit under the
 15 estate, what is your understanding?
 16 MR. PANKAUSKI: Objection. Lack of
 17 foundation.
 18 THE COURT: I'll let you cross on that, or it
 19 may be brought out by his answer. Go ahead.
 20 THE WITNESS: I don't believe they should be.
 21 BY MR. FEAMAN
 22 Q And have you had discussions with Ted
 23 concerning this?
 24 A Yes.
 25 Q And has Ted Bernstein disagreed with you?

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1 A Yes.
 2 Q How so? What has he indicated to you?
 3 A He believes his children should be included
 4 in the estate.
 5 Q Do you disagree with that?
 6 A I do.
 7 Q And did you, in September of last year,
 8 approach, with your wife, the law offices of
 9 Mr. Pankauski?
 10 A Yes, sir.
 11 Q Do you recall about when that was?
 12 A September 20th or so, around that area.
 13 Q And was the approach in person or by phone?
 14 A By phone.
 15 Q Okay. And who called?
 16 A I believe my wife initiated the call.
 17 Q Okay. Were you present when she made the phone
 18 call?
 19 A I don't believe so.
 20 Q Okay. And how long did she -- withdrawn. As a
 21 result of that phone call, was there an e-mail sent to
 22 your -- to Mr. Pankauski's office?
 23 A Yes, sir.
 24 Q Do you know to whom it was sent?
 25 A I believe to Mr. Pankauski and his assistant,

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1 doesn't fit the question.
 2 MR. FEAMAN: Okay. Thank you. Hold on.
 3 BY MR. FEAMAN
 4 Q Are you aware that your wife sent an e-mail to
 5 Mr. Pankauski's office?
 6 A Yes.
 7 Q And after that e-mail, did you personally have
 8 a conversation with Mr. Pankauski's office?
 9 A Yes.
 10 Q With whom did you speak?
 11 A Mr. Pankauski.
 12 Q Directly?
 13 A Yes.
 14 Q Was this by telephone?
 15 A Yes.
 16 Q For how long?
 17 A An hour or so.
 18 Q Was this shortly after -- or within a few days
 19 after the e-mail was sent by your wife?
 20 A Yes, sir.
 21 Q And was he in possession of documents that had
 22 been transmitted by your wife to him?
 23 A Yes, sir.
 24 Q And did you discuss with Mr. Pankauski anything
 25 that you would consider to be confidential?

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1 Michelle Morley.
 2 MR. PANKAUSKI: Objection, speculation. He's
 3 believing.
 4 THE COURT: Okay. Try to avoid belief, tell
 5 me what you know. Can you reanswer?
 6 THE WITNESS: Yes. We sent information to
 7 both Mr. Pankauski and his assistant.
 8 BY MR. FEAMAN
 9 Q And were you -- did your wife send an e-mail as
 10 a follow-up to that telephone conversation?
 11 A Yes.
 12 Q Okay. And were you copied on that e-mail?
 13 A Yes.
 14 Q Okay. Let me show you what's been marked as
 15 Exhibit A, ask you if this is a true copy of the e-mail
 16 that was sent by your wife, in which you were copied,
 17 after the initial conversation that she had with
 18 Mr. Pankauski's office?
 19 THE COURT: So just -- because I think I have
 20 the Exhibit A at the top part of that doesn't
 21 apply, correct? Because that's February 10th.
 22 MR. FEAMAN: Correct.
 23 THE COURT: So if the other -- your question
 24 is, what did Candice send. But this is an e-mail
 25 from Michelle. So it doesn't -- the e-mail

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1 A Yeah, confidential and adverse to the
 2 information about my brother.
 3 Q Like what?
 4 A Like what we thought about my brother's
 5 actions with the other attorneys. The fact that there
 6 was forgery going on. We believed he was working with
 7 the attorneys who resigned yesterday, Tescher and
 8 Spallina. That Tescher and Spallina had brought them
 9 in, had business dealings, et cetera. We gave him a
 10 lot of confidential information, I feel.
 11 Q Did you discuss Mr. Pankauski's law firm
 12 representing you?
 13 A Yes, sir.
 14 Q And was a retainer asked for?
 15 A It was.
 16 Q And what were the terms of the retainer that
 17 you recall?
 18 A To -- he wanted us to pay money and to retain
 19 his services. And we couldn't afford it. And I
 20 basically told him we couldn't afford it.
 21 THE COURT: That's not the question.
 22 THE WITNESS: Oh, okay. Yeah, a retainer was
 23 sought.
 24 BY MR. FEAMAN
 25 Q Was a retainer discussed?

<p style="text-align: right;">85</p> <p>1 A Yes, sir.</p> <p>2 Q And was it an amount of money that you didn't</p> <p>3 presently have at that time?</p> <p>4 A Yes.</p> <p>5 Q And did you set about to try to obtain the</p> <p>6 retainer?</p> <p>7 A I told him I would try to get it from the</p> <p>8 court, and make a petition to the court, which I filed</p> <p>9 with the court. And I've been waiting for an answer on</p> <p>10 that. And then I would have called him back and got</p> <p>11 the money for him.</p> <p>12 Q All right. Did you ever receive any</p> <p>13 communication from Mr. Pankauski saying he was</p> <p>14 affirmatively not going to represent you?</p> <p>15 A No.</p> <p>16 Q When did you hear that Mr. Pankauski had been</p> <p>17 retained by Mr. Ted Bernstein?</p> <p>18 A Oh, week or two ago.</p> <p>19 Q And did you review the notice of appearance</p> <p>20 that was filed by Mr. Pankauski in this case?</p> <p>21 A I did.</p> <p>22 Q When did you receive that?</p> <p>23 A Oh, no, I don't think I've ever reviewed a</p> <p>24 notice of appearance from him.</p> <p>25 Q Okay. And when you found out that</p>	<p style="text-align: right;">87</p> <p>1 A Violated, you know.</p> <p>2 Q What is it?</p> <p>3 A Violated.</p> <p>4 Q Why?</p> <p>5 A Because it's a big risk. You know, he was</p> <p>6 also referred to me by Joel Weissman, who has very</p> <p>7 intimate knowledge of our case and what's going on in</p> <p>8 my life, and information regarding my brother. And</p> <p>9 I've had conversations with Mr. Weissman about that.</p> <p>10 And he was trying to help me out. And I, you know, I</p> <p>11 feel violated, that's all I can say.</p> <p>12 MR. FEAMAN: Okay. No further questions.</p> <p>13 THE COURT: Cross-examination.</p> <p>14 MR. PANKAUSKI: Thank you, Your Honor.</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. PANKAUSKI</p> <p>17 Q Good afternoon, Mr. Bernstein.</p> <p>18 A Good afternoon, sir.</p> <p>19 Q In addition to contacting my law firm, you</p> <p>20 contacted Joel Weissman's law firm?</p> <p>21 A Joel Weissman was referred to us.</p> <p>22 Q Is that a yes?</p> <p>23 A Yes.</p> <p>24 Q And you contacted Norman Fleisher?</p> <p>25 A I might have.</p>
<p style="text-align: right;">86</p> <p>1 Mr. Pankauski was coming in on behalf of Mr. Ted</p> <p>2 Bernstein, what was your reaction?</p> <p>3 A I contacted him and said that I felt that he</p> <p>4 was conflicted. And -- that was the first contact.</p> <p>5 Q Did you send him an e-mail in that regard?</p> <p>6 A I did.</p> <p>7 Q And did you express any desire that he not</p> <p>8 represent Mr. Bernstein?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. And what was his response?</p> <p>11 A He didn't see eye to eye with me, basically.</p> <p>12 I sent him then the Bar rules that I felt applied, as a</p> <p>13 follow-up e-mail. Then, you know, I figured I'd come</p> <p>14 here and talk to the judge or something.</p> <p>15 Q So this motion is not something that you have</p> <p>16 expressed to Mr. Pankauski prior to today, is that</p> <p>17 correct?</p> <p>18 A No. No, I asked him politely to disqualify,</p> <p>19 you know, under ethical rules.</p> <p>20 Q Okay. And, obviously, you felt that request</p> <p>21 was rejected, correct?</p> <p>22 A Correct. He's here.</p> <p>23 Q How do you feel as a result of his continuing</p> <p>24 this case in terms of your personal involvement in this</p> <p>25 case?</p>	<p style="text-align: right;">88</p> <p>1 Q You did contact Norman Fleisher?</p> <p>2 A Are you telling me I did?</p> <p>3 Q I'm asking you.</p> <p>4 A No, you were telling me. But I don't know.</p> <p>5 Who is Norman Fleisher?</p> <p>6 Q And you contacted attorney Amy Beller?</p> <p>7 A I might have.</p> <p>8 Q And you contacted Brandon Pratt?</p> <p>9 MR. FEAMAN: Outside the scope of direct.</p> <p>10 THE COURT: Overruled.</p> <p>11 THE WITNESS: I retained Brandon Pratt.</p> <p>12 BY MR. PANKAUSKI</p> <p>13 Q Please tell us what other --</p> <p>14 A The children retained Brandon Pratt.</p> <p>15 Q Your children are minors, correct?</p> <p>16 A Yes.</p> <p>17 Q Please tell us who the other attorneys in Palm</p> <p>18 Beach County are that you contacted regarding this</p> <p>19 matter?</p> <p>20 A No.</p> <p>21 MR. PANKAUSKI: Your Honor, the witness is</p> <p>22 refusing to answer my question and he hasn't --</p> <p>23 THE COURT: I'm sorry.</p> <p>24 THE WITNESS: I answered. I said no.</p> <p>25 THE COURT: I thought he said none.</p>

<p style="text-align: right;">89</p> <p>1 THE WITNESS: I said no. 2 THE COURT: No, you weren't going to answer 3 or no -- 4 THE WITNESS: No, I don't know to tell him 5 who I've contacted in Palm Beach County. 6 THE COURT: Okay. 7 BY MR. PANKAUSKI 8 Q I'm sorry, let me ask you again because I don't 9 think we were clear. Besides the attorneys that I've 10 mentioned, sir, please tell us what other attorneys 11 you've contacted in Florida regarding this matter. 12 A I don't know. 13 MR. FEAMAN: Objection. I think that's 14 confidential. 15 THE WITNESS: And it is. I feel it's 16 confidential too. 17 THE COURT: I'll overrule that. Good ahead. 18 So you can answer if you know of others that you 19 did contact. If not, say so. 20 THE WITNESS: I think I've contacted others, 21 I don't know who. I didn't bring a list of who I 22 contacted and who I haven't. 23 BY MR. PANKAUSKI 24 Q You contacted between 6 and 12 attorneys to 25 represent you in this matter?</p>	<p style="text-align: right;">91</p> <p>1 the estate and has been working closely with them and 2 to block us from getting proper notices and notices of 3 his supposed titles and information and accountings and 4 everything else too. And, you know, so I feel that we 5 have a differing interest in the outcome of the 6 estates. And I've expressed that to you and told you 7 about the documents, and what I thought about him 8 working with Spallina and Tescher and all of those 9 things. So that's stuff I don't normally tell somebody 10 unless they're asking -- and all my documents were 11 marked confidential that I sent you, all my e-mails 12 were marked confidential, et cetera. 13 Q You sent me e-mails? 14 A Me or my wife. 15 Q Okay. You don't remember if you sent me 16 e-mails? 17 A I don't recall at this moment. 18 Q In fact, you never -- 19 A I have sent you e-mails. Yes, I have. 20 Q You sent me, John Pankauski, e-mails? 21 A Yes, sir. 22 Q Do you have any of those with you today? 23 A I believe the ones I just sent you last week, 24 weren't those e-mails? 25 Q Okay. Other than February 10th and</p>
<p style="text-align: right;">90</p> <p>1 A Possibly. 2 Q Okay. And you've provided those attorneys that 3 you've contacted with the information that you provided 4 to my law firm? 5 A Not all of them. Only the ones that 6 requested information under confidentiality. 7 Q And which lawyers -- 8 A Similar to you. 9 Q And which lawyers are those? 10 A I can't recall. 11 Q Okay. Mr. Feaman asked you whether you were 12 adverse to your brother Ted, and you said yes? 13 A Yes. 14 Q How are you adverse to your brother Ted? 15 A We have differing interests in the outcomes 16 out of the estate. 17 Q Can you explain what the differing outcomes 18 are? 19 A Yeah. I believe that there's been fraud in 20 the estate by the estate planners and Ted to change 21 beneficiaries in the estate. I've asserted those 22 claims in the courts and in criminal authorities. And 23 I believe that there's now evidence that certain 24 documents were signed postmortem for my father and 25 myself illegally. Ted brought these attorneys in to</p>	<p style="text-align: right;">92</p> <p>1 February 12th, other than those two, did you send me any 2 e-mails? 3 A I believe my wife did. 4 Q Let's get this straight now. Your wife Candice 5 sent me, personally, John Pankauski, e-mails? 6 A Sorry, your law firm. 7 Q Okay. So let's get this straight. And I'm 8 sorry, but this is important. 9 A No, I don't mind the badgering. 10 THE COURT: Wait. Wait. Stop. Eliot, 11 that's not badgering. 12 THE WITNESS: Okay. Sorry. 13 THE COURT: Okay. So just answer a straight 14 question and this will go smoother. 15 Go ahead. 16 BY MR. PANKAUSKI 17 Q Mr. Bernstein -- Mr. Eliot Bernstein -- you 18 personally, not Candice, you personally never sent an 19 e-mail to my law firm? 20 A I did. 21 Q Other than February 10th and February 12th? 22 A I don't believe so. 23 Q Thank you. 24 Okay. You've read your dad Simon's will? 25 A Yes, sir.</p>

<p style="text-align: right;">93</p> <p>1 Q You are not mentioned in the will as a 2 beneficiary? 3 A Which will? 4 Q Your dad's will. The one that's before this 5 court. 6 A I don't believe so. 7 Q May I approach the witness with a copy of 8 Simon's will? 9 THE COURT: You're allowed to do that. 10 BY MR. PANKAUSKI 11 Q Would you like to take a look at it. If you 12 can just look through your dad, Simon's, will, which I 13 just handed to you, can you just confirm, please, that 14 you are not a beneficiary under your dad's will? 15 A I was convinced under this one I wasn't. But 16 I was told by Spallina and Tescher that I was a 17 personal property beneficiary or something. 18 Q So, you know, are you a beneficiary under your 19 dad's will that I just handed to you? 20 THE COURT: So the date of the will? 21 MR. FEAMAN: Objection, asked and answered. 22 THE COURT: Yeah. Sustained. Date of the 23 will? 24 MR. PANKAUSKI: The date of the will is 25 July 20 -- looks like first -- 2012.</p>	<p style="text-align: right;">95</p> <p>1 A. Do you see that that looks like an e-mail from your 2 wife Candice? 3 A Yes, sir. 4 THE COURT: No, that's -- but that's on 5 February 10th. Is that what you're getting at? 6 MR. PANKAUSKI: Yes, the date doesn't matter. 7 THE COURT: Okay. 8 BY MR. PANKAUSKI 9 Q What is mentioned in line item three? 10 A Copies of revised wills, trusts for Simon 11 Bernstein. 12 Q Thank you. 13 A That means it's an amended and restated trust 14 of Simon, not the trust of Simon that you asked about, 15 just for your edification. 16 Q And, in fact, his amended trust is your dad's 17 last trust, correct? 18 A If you believe what they are saying. 19 Q So you have seen your dad's trust? 20 A No, I've never seen my dad's trust. I've 21 seen an amended and restated trust. The original 22 trust, I believe, has me and my two sisters as 23 beneficiary, and Ted and his children wholly excluded 24 with my sister Pam as the only non-beneficiaries in 25 this whole thing.</p>
<p style="text-align: right;">94</p> <p>1 THE COURT: Okay. Next question. 2 BY MR. PANKAUSKI 3 Q And you are not a beneficiary of your father, 4 Simon's, revocable trust? 5 A I've never seen that. That's been withheld 6 and suppressed and denied by former counsel -- 7 THE COURT: So is the answer I don't know? 8 THE WITNESS: No, it's I've never seen it. 9 THE COURT: Okay. Straight answer, we'll 10 move through this. 11 BY MR. PANKAUSKI 12 Q Your testimony is you've never seen your dad, 13 Simon's, revocable trust? 14 A That's correct. 15 Q Do you have Exhibit A in front of you that 16 Mr. Feaman asked you about earlier? 17 A No. 18 Q And Exhibit A was attached to the verified 19 motion filed by Mr. Stansbury? 20 A No. 21 Q Okay. May I approach the witness? 22 THE COURT: Yeah. 23 BY MR. PANKAUSKI 24 Q I'm going to hand you my verified motion and 25 I'm going to ask you to direct your attention to Exhibit</p>	<p style="text-align: right;">96</p> <p>1 Q You earlier testified that you sent an e-mail 2 to me, Pankauski, and my assistant. Do you recall that 3 testimony? 4 A I believe it was my wife sent an e-mail to 5 your firm. 6 Q Yes. But I'd like to correct that. 7 A Okay. 8 Q Your wife Candice sent an e-mail to my 9 assistant, not to me? 10 A Correct. 11 Q And my assistant followed up with Candice by 12 e-mail? 13 A Well, actually, you requested that your 14 assistant get the documents for your meeting with me. 15 That's how I recall it. Candice came and asked me, and 16 we sent you the information to your assistant for your 17 review for our meeting because you were in California 18 or something. 19 Q Let's be clear. I've never spoken to your wife 20 Candice? 21 A Correct. 22 Q I have never asked Candice for any documents? 23 A Except your assistant asked Candice for 24 documents for our meeting, correct. 25 Q Correct. You said that you had one</p>

97	<p>1 conversation with me for an hour or so. Do you remember 2 that testimony? 3 A Yeah. And I believe it was two conversations 4 I had with you total. 5 Q Now, it's two conversations? 6 A Yeah. You called me back to tell me you had 7 found a way to pay for your bill. 8 Q And when were those two conversations? 9 A September something. I don't have it in 10 front of me today. I can check my calendar. 11 Q Do you have your calendar with you? 12 A I don't. 13 Q Okay. And how far apart were those two 14 conversations? 15 A Shortly thereafter, I believe. 16 Q And they were in the evening, right? 17 A I believe. 18 Q Both of them were? 19 A I believe. 20 Q And you said the first one lasted an hour or 21 so. Do you recall how long this supposed second 22 conversation lasted? 23 A I believe it was rather brief. 24 Q Less than five minutes? 25 A Maybe more.</p>	99	<p>1 read that, Mr. Bernstein? 2 A Mr. Pankauski -- 3 Q No, I'm sorry, I meant just read it to 4 yourself, so... 5 A All right. 6 MR. PANKAUSKI: I'm sorry, I don't. I 7 should, but I don't. If you'd like to come over 8 here, you're more than welcome to look at it with 9 me. 10 MR. FEAMAN: May I approach the witness? 11 THE COURT: You may. 12 BY MR. PANKAUSKI 13 Q Do you see about -- in your e-mail -- one, two, 14 three, four, five, six -- bless you, Mr. Rose -- seven 15 lines up from the bottom? 16 A Correct. 17 Q You see that as of February 10th, 18 Mr. Bernstein, your story was that I proposed a retainer 19 of \$200,000? 20 A Correct. 21 Q Okay. So let me go on from there. You were 22 asked whether you had -- whether you discussed 23 confidential information to me, and you said yes? 24 A Correct. 25 Q And you said that it involved forgery and</p>
98	<p>1 Q And I asked you for -- your belief is that I 2 asked you for a \$200,000 retainer? 3 A No. My belief -- 4 THE COURT: No. No. Wait. Next question. 5 THE WITNESS: Okay. 6 BY MR. PANKAUSKI 7 Q Isn't it your belief that -- strike that. 8 What's your understanding of how much I asked for a 9 retainer? 10 A I don't recall the exact amount for the 11 retainer. 12 THE COURT: Then stop. That's your answer. 13 Next question. 14 BY MR. PANKAUSKI 15 Q You sent me an e-mail on February 10th? 16 A Correct. 17 Q Okay. May I approach the witness. And this is 18 a copy of the February 10th e-mail that you sent to me, 19 correct? 20 A Correct. 21 MR. FEAMAN: Do you have another copy of 22 that? 23 MR. PANKAUSKI: Yeah, I should. 24 BY MR. PANKAUSKI 25 Q And while I'm looking, could you just please</p>	100	<p>1 Tescher and Spallina, correct? 2 A Yes. 3 Q Any other confidential information? 4 A Yeah, all kinds of stuff. 5 Q Okay. 6 A We talked about in the course of our 7 conversation about you representing us. 8 Q Well, please tell us what that is. 9 A You know, I believe we spoke mainly about the 10 problems in the estate with the forgeries and the 11 notary public, the police investigations that we were 12 launching against Ted, Tescher, et cetera. I believe 13 we talked about the various aspects of our legal 14 strategy in, you know, against the estates and Ted, et 15 cetera, and were looking to retain you. 16 Q Is your testimony that you and I had a 17 conversation about a legal strategy against the estate? 18 A Against -- yes, against the estates, and the 19 people in charge, Tescher, Spallina, the personal 20 representatives, getting rid of them, et cetera. 21 Q And is it your testimony that I discussed trial 22 strategy with you about suing your brother Ted? 23 A Removing the personal representative and Ted 24 from having any interest in the estates. 25 Q I had a discussion with you about removing</p>

<p style="text-align: right;">101</p> <p>1 Ted's interest in your dad's estate? 2 A In all the estates. 3 Q Okay. 4 A That I told you I believe these documents of 5 2012 were forged and fraudulent and that we had 6 evidence, you know, I went into all that. 7 Q Sir, do we agree Ted is not a beneficiary of 8 your dad's estate and that there would be nothing to 9 remove him from? 10 A It's his children, excuse me. 11 Q Isn't it true that you spoke to me about filing 12 a malpractice action? 13 A Excuse me, let me correct that. I did want 14 you to remove Ted. Because Ted was representing that 15 he was trustee of this trust of my father's. And I 16 expressed to you that he hadn't sent out the proper 17 forms. He hadn't followed any of the rules. And that 18 he was acting in bad faith as an alleged fiduciary 19 under alleged documents. 20 Q You spoke to me about a potential malpractice 21 action against Don Tescher? 22 A That was only a small part. 23 Q In fact, you told me that you -- 24 A Excuse me, in fact, you are the one -- we 25 just told you that you should fund your bill from</p>	<p style="text-align: right;">103</p> <p>1 BY MR. PANKAUSKI 2 Q So you and I did discuss malpractice against 3 Mr. Tescher? 4 A Correct. 5 Q Okay. When I asked you about confidential 6 information a moment ago, you were talking about some 7 criminal inquiries, you were talking about some 8 forgeries. You and I discussed a postdated or backdated 9 notary clause? 10 A No. 11 Q We didn't discuss a notary clause that was 12 presented to this court whose notary seal was improper? 13 A Not only the notary seal, but the signatures. 14 Q Okay. So forgive me. You and I had a 15 discussion about a deficient notary clause, correct? 16 A A forgery and deficient notary on a forged 17 document, yes. 18 Q Correct. And when you spoke with me in 19 September of 2013, the notary clause information was 20 already before this court? 21 A Part of it. 22 Q Yeah, it was public information? 23 A Some of it. 24 Q And the criminal matters that you're talking 25 about, those were -- there was already an ongoing</p>
<p style="text-align: right;">102</p> <p>1 Kimberly Moran's forgery and fraud, which Mr. Tescher 2 and Spallina were responsible under Florida law for the 3 acts of their notary who committed postmortem forgery 4 of my father's signature, et cetera. 5 Q You told me that you had been looking for a 6 lawyer to sue Mr. Tescher, but you couldn't find one? 7 A Did I? 8 Q Well, that's my question to you. 9 A Oh, that was a statement. 10 THE COURT: He asked you the question. You 11 can answer. 12 THE WITNESS: What was the -- how -- 13 BY MR. PANKAUSKI 14 Q You told me that you were trying to find an 15 attorney to sue Don Tescher for malpractice? 16 A No. 17 Q You didn't tell me that you were looking for an 18 attorney to sue Don Tescher for malpractice? What did 19 you tell me about the malpractice? 20 A Well, you contacted me and said -- 21 THE COURT: Listen to the question. 22 THE WITNESS: Okay. In regards to the 23 malpractice, I said that case against Tescher and 24 Spallina should be the point of funding for an 25 attorney to get their fees paid for.</p>	<p style="text-align: right;">104</p> <p>1 investigation by the time you and I chatted in September 2 of 2013? 3 A And I don't know if anybody else knew about 4 that, et cetera. 5 Q Is that a yes? 6 A Yes. There were several investigations 7 going. 8 THE COURT: Try not to volunteer, 9 Mr. Bernstein. 10 BY MR. PANKAUSKI 11 Q The matters that you spoke to me about in 12 September of 2013, you had spoken to -- you had spoken 13 about with other individuals? 14 A I had. 15 Q And, in fact, most of that information was 16 public record because much of it was going on right here 17 in this estate proceeding? 18 A No. 19 Q What wasn't a public record? 20 A I don't want to disclose it. I mean, it was 21 confidential information I gave you at the time. 22 That's -- I still feel it's confidential and feel that 23 I'm -- you might be exposing that stuff. 24 Q What's the confidential information? 25 A Just information about the documents we're</p>

105	<p>1 discussing in this case.</p> <p>2 Q What information about the documents?</p> <p>3 A I don't want to --</p> <p>4 THE COURT: Okay. He's objecting.</p> <p>5 Sustained.</p> <p>6 BY MR. PANKAUSKI</p> <p>7 Q The February 10th e-mail from Candice to me</p> <p>8 that's in front of you.</p> <p>9 A Uh-huh.</p> <p>10 Q You would agree that those documents, 1 through</p> <p>11 4, are the only documents that Candice provided to my law</p> <p>12 firm?</p> <p>13 MR. FEAMAN: Objection, form.</p> <p>14 Mischaracterizes the date of the e-mail.</p> <p>15 MR. PANKAUSKI: Is it February 12th?</p> <p>16 MR. FEAMAN: It's September 20th -- September</p> <p>17 19th.</p> <p>18 MR. PANKAUSKI: Thank you.</p> <p>19 BY MR. PANKAUSKI</p> <p>20 Q Thank you. I'm not even close. Thank you.</p> <p>21 The e-mail that I handed you, the</p> <p>22 September 20, 2013 e-mail.</p> <p>23 THE COURT: September 19th.</p> <p>24 BY MR. PANKAUSKI</p> <p>25 Q Thank you. September 19, 2013 --</p>	107	<p>1 Bernstein will 2008, Simon Bernstein --</p> <p>2 MR. FEAMAN: Got to go slower because the</p> <p>3 court reporter --</p> <p>4 THE WITNESS: Sorry, sir. Okay. Shirley</p> <p>5 Bernstein trust, 2008. Shirley Bernstein will,</p> <p>6 2008. Simon Bernstein amended trust, 2012. Simon</p> <p>7 Bernstein will, 2012. Waivers unnotarized and</p> <p>8 notarized, transcripts part 2, 2013, 09/13,</p> <p>9 Bernstein Holdings, LLC, 2008, last pages,</p> <p>10 Bernstein Holdings, LLC, Shirley Bernstein</p> <p>11 petition for discharge.</p> <p>12 BY MR. PANKAUSKI</p> <p>13 Q Bernstein, LLC, you were not a member of that</p> <p>14 entity, correct?</p> <p>15 A I don't know.</p> <p>16 Q Okay. So those are the --</p> <p>17 A I believe I am a member.</p> <p>18 Q Okay. So those are all the documents that</p> <p>19 Candice provided to my law firm?</p> <p>20 A I believe so.</p> <p>21 Q Okay. And you did not provide any other</p> <p>22 documents to my law firm?</p> <p>23 A I do not believe so.</p> <p>24 Q So all the documents that were provided to my</p> <p>25 law firm were documents that are either public documents</p>
106	<p>1 A It's not in front of me.</p> <p>2 Q I'm sorry. Is it --</p> <p>3 THE COURT: That's the Exhibit A that is</p> <p>4 attached to the motion.</p> <p>5 MR. PANKAUSKI: Thank you, Judge. May I</p> <p>6 approach the witness?</p> <p>7 THE WITNESS: But I don't have that.</p> <p>8 THE COURT: Okay. He'll give you a copy. Go</p> <p>9 ahead.</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q Okay. Mr. Bernstein, so I'm handing you what</p> <p>12 is Composite Exhibit A, the first page of that, and</p> <p>13 that's attached to the verified motion of Mr. Stansbury.</p> <p>14 That's the e-mail that you previously identified sent to</p> <p>15 my law firm from your wife, Candice, correct?</p> <p>16 A Correct.</p> <p>17 Q Okay. And you would agree that the documents</p> <p>18 listed 1 through 4 are the documents that Candice</p> <p>19 provided to my law firm?</p> <p>20 A No.</p> <p>21 Q Okay. What documents did Candice provide to</p> <p>22 this law firm?</p> <p>23 A It's on the next page.</p> <p>24 Q Okay. And what documents are those?</p> <p>25 A Shirley Bernstein trust 2008, Shirley</p>	108	<p>1 or which have been filed with this court?</p> <p>2 A No.</p> <p>3 Q Okay. What's not a public document from that</p> <p>4 list?</p> <p>5 A Bernstein, LLC stuff.</p> <p>6 Q And where did you obtain those documents?</p> <p>7 A I don't recall.</p> <p>8 Q You obtained them from Tescher and Spallina,</p> <p>9 didn't you?</p> <p>10 A I don't think so. I didn't.</p> <p>11 MR. PANKAUSKI: May I approach and get that?</p> <p>12 Thanks.</p> <p>13 Your Honor, I'd like to move Composite</p> <p>14 Exhibit A into evidence.</p> <p>15 THE COURT: Any objection?</p> <p>16 MR. FEAMAN: No objection.</p> <p>17 THE COURT: Okay. That's the February 19</p> <p>18 letter?</p> <p>19 MR. PANKAUSKI: Yes.</p> <p>20 THE COURT: From Michelle Morley to Candice,</p> <p>21 correct?</p> <p>22 MR. PANKAUSKI: Forgive me, it's the Monday,</p> <p>23 February 10th, 2014, Candice Bernstein e-mail</p> <p>24 to -- it's not even to Michelle --</p> <p>25 MR. FEAMAN: That's the heading because it's</p>

<p style="text-align: right;">109</p> <p>1 how it was transmitted, but it's the September 19, 2 2013 e-mail from Michelle Morley to 3 Mrs. Bernstein. And then the follow-up e-mail 4 from Mrs. Bernstein. 5 THE COURT: September 19 e-mail from Michelle 6 to Candice is 1. 7 (Thereupon, Exhibit Number 1 was marked in 8 evidence) 9 MR. PANKAUSKI: Thank you. 10 THE COURT: Number 2 will be the 11 September 20, 2013 e-mail from Candice to 12 Michelle. 13 (Thereupon, Exhibit Number 2 was marked in 14 evidence) 15 MR. PANKAUSKI: Thank you. 16 THE COURT: So I'll need stamps on them 17 eventually. 18 MR. PANKAUSKI: Yes. 19 THE COURT: I have them here. 20 BY MR. PANKAUSKI 21 Q Do you remember when Mr. Stansbury's counsel 22 questioned you about you receiving a letter from 23 Pankauski saying there was no representation? 24 A What do you mean? 25 Q I'm just asking you if you remember that</p>	<p style="text-align: right;">111</p> <p>1 lawyers and you are not a client? 2 A Yeah. 3 Q You received this letter from my office within 4 a day or two of September 24, 2013? 5 A I never got it. 6 Q Okay. 7 A I've never seen that letter in my life. 8 How did you send it? 9 MR. FEAMAN: You don't get to ask questions. 10 THE WITNESS: Oh, sorry. 11 Can I show that to my wife? 12 BY MR. PANKAUSKI 13 Q Mr. Stansbury's counsel, in his opening 14 statement, said that a relationship was formed between 15 you and me. You have never signed a legal services 16 contract with my law firm? 17 A Correct. 18 Q You've never provided an initial fee or 19 retainer to my law firm? 20 A Correct. 21 MR. FEAMAN: We'll stipulate, Your Honor, 22 there is -- 23 THE COURT: Stipulation accepted. Got it. 24 MR. FEAMAN: -- no formal relationship. 25 BY MR. PANKAUSKI</p>
<p style="text-align: right;">110</p> <p>1 Mr. Stansbury's counsel asked you did you ever receive a 2 letter from Pankauski saying I don't represent you? 3 A Correct. 4 Q And you replied in the negative. You said you 5 never received the letter? 6 A Correct. 7 MR. PANKAUSKI: May I approach the witness, 8 Your Honor? 9 THE COURT: Yes. 10 BY MR. PANKAUSKI 11 Q Mr. Bernstein, be kind enough to look at the 12 one-page document that I handed you. Do you see that it 13 is a September 24, 2013 letter addressed to you at your 14 home address? 15 A Allegedly. I've never seen it. 16 Q And do you see that it's from my law firm? 17 A I do. 18 Q And do you see in the third paragraph it 19 references a malpractice action? 20 A Yeah. 21 Q And do you see in the first sentence -- 22 A Yeah. 23 Q Excuse me, do you see in the second paragraph 24 where it says, because we have not been hired, we are not 25 doing any work on your behalf, period. We are not your</p>	<p style="text-align: right;">112</p> <p>1 Q The documents that's on Exhibit 1 that Candice 2 sent to my law firm were documents which you obtained 3 from Tescher and Spallina? 4 A No. 5 Q Who did you obtain those from? 6 A Christine Yates. 7 Q And who's Christine Yates? 8 A She's an attorney at Tripp Scott law firm. 9 Q Okay. And how did you get those documents on 10 Exhibit 1 from the Tripp Scott law firm? 11 MR. FEAMAN: Objection, attorney-client 12 privilege. 13 THE COURT: I don't know that there is one. 14 THE WITNESS: Okay. I'll object on that 15 ground, too. 16 THE COURT: Well -- 17 THE WITNESS: That means she is my attorney 18 for me and my children. 19 THE COURT: Okay. I'm going to overrule. I 20 think you need to say how you got the documents. 21 THE WITNESS: She transmitted them to me. 22 THE COURT: All right. 23 BY MR. PANKAUSKI 24 Q Where did she receive them from? 25 A No idea.</p>

<p style="text-align: right;">113</p> <p>1 Q Okay. So you also hired Tripp Scott to 2 represent you regarding your mom and dad's estate? 3 A I hired them to represent us, my children and 4 I. And then I had to split it out to just my children 5 because of the conflicts. 6 Q Tripp Scott still does not represent you? 7 A No, they don't now. 8 Q Because you can't pay them? 9 A Partially. 10 Q And Brandon Pratt doesn't represent you because 11 you can't pay him? 12 A No. 13 MR. FEAMAN: Objection, relevancy. 14 THE COURT: Yeah, sustained. 15 THE WITNESS: I actually overpaid him. 16 THE COURT: Don't do that. Eliot, you know 17 the rules. 18 THE WITNESS: Sorry, sir. 19 MR. PANKAUSKI: May I approach the witness, 20 Your Honor? 21 THE COURT: May you what? 22 MR. PANKAUSKI: Approach the witness. 23 THE COURT: Sure. You don't have to ask me. 24 BY MR. PANKAUSKI 25 Q Mr. Bernstein, I'm going to hand you a</p>	<p style="text-align: right;">115</p> <p>1 MR. FEAMAN: I have a relevancy objection to 2 number 4, the batch of documents. 3 THE COURT: Let's get through the ID part of 4 it first, though. 5 MR. FEAMAN: Okay. 6 BY MR. PANKAUSKI 7 Q So Mr. Bernstein, you recognize that I've 8 handed you a 74-page e-mail? 9 A Yes, sir. 10 Q And that was an e-mail that you prepared? 11 A I'd have to read it all and check that 12 nothing has been changed. But -- 13 Q Well, I -- 14 A Looks like it could be. 15 Q I'm sorry? 16 A I said it looks like it could be, but I'd 17 have to check. There's been a lot of document 18 tampering going on, so I'm not going to attest to it a 19 hundred percent. I haven't had time to review it. 20 Q Okay. Would you turn to Page 2, please? 21 A Yes. 22 Q And I'm directing this question to you about 23 your claim that you shared confidential information with 24 my firm. So please keep that in mind when I ask you 25 these questions. On Page 2 -- excuse me. Go back to</p>
<p style="text-align: right;">114</p> <p>1 composite exhibit, a number of documents -- forgive me, 2 it's not a composite document. It's one e-mail. And 3 Mr. Bernstein, you recognize that as an e-mail that you 4 sent to Ted Bernstein and a number of other people? 5 THE COURT: Okay. Can I ask one thing before 6 you do. You were talking about a September 24 7 letter that wasn't introduced into evidence, is 8 that -- I think that you were short copies of 9 that. 10 MR. PANKAUSKI: Yes, Your Honor. Thank you. 11 The September 24, 2013 letter, I'd like to move 12 into evidence. 13 THE COURT: Any objection. 14 MR. FEAMAN: No objection. 15 THE COURT: All right, number 3. I'll give 16 you these things to stamp, here's one, two and -- 17 you'll have three. 18 (Thereupon, Exhibit Number 3 was marked in 19 evidence) 20 MR. PANKAUSKI: Thank you. May I grab the 21 stamp? 22 MR. FEAMAN: I do. 23 THE COURT: Let him finish stamping them and 24 then -- so next one will be purportedly number 4, 25 but we're not there yet.</p>	<p style="text-align: right;">116</p> <p>1 Page 1 for a moment. In this e-mail you not only sent it 2 to Ted Bernstein, but you sent it to everybody after the 3 to, T-O, colon, correct? 4 A Is the date missing on that? 5 MR. FEAMAN: That's my objection; improper, 6 lack of foundation. Wait. Excuse me. 7 THE WITNESS: Sorry. 8 THE COURT: Let me see it. 9 MR. FEAMAN: My objection is lack of 10 predicate, foundation. 11 THE COURT: I need to see it, so. This is 12 I.D. Number 4. Are you moving this into evidence? 13 Because you need to do that if you're going to 14 refer to it. 15 MR. PANKAUSKI: Most probably. Yes, Your 16 Honor. 17 THE COURT: Okay. But Mr. Feaman, Eliot 18 Bernstein identified this as his e-mail. He just 19 said he didn't have a chance to look at all the 20 pages to make sure there weren't any documents 21 that were snuck in, in essence. 22 THE WITNESS: Without the date, I would say 23 it's not my e-mail. 24 MR. FEAMAN: Excuse me, Mr. Bernstein, if I 25 may.</p>

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1 THE WITNESS: Sorry.

2 MR. FEAMAN: Without a date, Your Honor, you

3 can't connect confidential -- he's offering it for

4 the purpose that somehow it was --

5 THE COURT: First thing is to identify it. I

6 haven't determined more than that right now. So

7 this is -- it's being shown to Eliot Bernstein,

8 purportedly, to be an e-mail from him to others.

9 MR. FEAMAN: Correct.

10 THE WITNESS: Well, now that it's missing the

11 date, I would say it's not my e-mail.

12 THE COURT: Okay. So are you sure you want

13 me to believe that part of your testimony? Listen

14 to me carefully. Because if I don't believe it,

15 I'm likely not to believe anything else you say.

16 THE WITNESS: Okay. I'll believe it.

17 THE COURT: Look at the e-mail. Let's not

18 play games with me.

19 THE WITNESS: I'm not.

20 THE COURT: Well, that was a game playing --

21 THE WITNESS: Well, I notice right off the

22 bat my normal stamp on my e-mails isn't here.

23 That scared me. So I said --

24 THE COURT: So is I-V-I-E-W-I-T --

25 THE WITNESS: Yeah. Yeah. That's all good.

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1 give -- the weight I give it, I'm not sure. If

2 there is an issue about when it was sent. So do

3 you remember when you sent this e-mail?

4 THE WITNESS: Looks like maybe shortly after

5 December 26 in response to letters from Tescher

6 and Spallina that are attached.

7 THE COURT: Of what year?

8 THE WITNESS: 2013.

9 THE COURT: Okay. All right. So objection

10 overruled. This is Number 4.

11 (Thereupon, Exhibit Number 4 was marked in

12 evidence)

13 MR. PANKAUSKI: Your Honor, may I get that

14 copy back and use this one?

15 THE COURT: All right.

16 MR. PANKAUSKI: I'll stamp it.

17 THE COURT: Okay.

18 BY MR. PANKAUSKI

19 Q Mr. Bernstein, would you be good enough to turn

20 to Page 2, please?

21 A Yes, sir.

22 Q And so you see on Page 2 that in this

23 communication to all these people, this e-mail?

24 A Yes, sir.

25 Q You're discussing forgery and fraud?

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1 THE COURT: I mean, that's you, right? I

2 mean, if we go ahead and pull your hard drive,

3 will we find this e-mail?

4 THE WITNESS: No. No. We can go on that

5 assumption.

6 THE COURT: Okay. That's -- okay. All

7 right. But I don't know the date of it, and you

8 can ask questions about that. But the subject is

9 response to Ted and Donald letters, re, emergency

10 distributions. And then there's a whole bunch of

11 other things there. Okay. And then there's some

12 other dates that are in the body of this exhibit.

13 So Mr. Feaman, your objection is what?

14 MR. FEAMAN: Without an establishment of a

15 date on the e-mail it has no probative value as to

16 whether the communications that Eliot made with

17 Mr. Pankauski in September were confidential or

18 not.

19 THE COURT: Okay. So let me think about

20 that. I'm looking here at the documents and

21 they -- that are contained in this e-mail -- and

22 there are a bunch of dates there. I see 2012,

23 2013 dates, court proceedings before me at some

24 point in 2013. And so admissibility versus

25 weight -- it's admissible. I mean, I may have to

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1 A Yes, sir.

2 Q And you're discussing wills and trusts of

3 Simon's estate, correct?

4 A Well, this is all after our conversation by a

5 long time, I believe.

6 Q Is that a yes?

7 A Yes.

8 Q And you're discussing a power of appointment,

9 right?

10 A Yes.

11 Q And you're talking about grandchildren and

12 beneficiaries, correct?

13 A Correct.

14 Q And if you turn back to one, you sent this to

15 attorney Mark Manceri?

16 A Yes, sir.

17 Q And you sent it to attorney Caroline Rogers?

18 A Yes, sir.

19 Q Mark Garber?

20 A Yes, sir.

21 Q You sent it to lawyers at Plaster Greenberg?

22 A Yes, sir.

23 Q In fact, you sent it to, what, a dozen or so

24 attorneys?

25 A Yes, sir.

<p style="text-align: right;">121</p> <p>1 Q Okay.</p> <p>2 THE COURT: I need the Exhibit 4 so I can see</p> <p>3 it. As well as the other exhibits if you've</p> <p>4 stamped them.</p> <p>5 MR. PANKAUSKI: Yes, I think we did. I'll</p> <p>6 complete them before we leave.</p> <p>7 Thank you.</p> <p>8 BY MR. PANKAUSKI</p> <p>9 Q Mr. Bernstein, just a couple questions about</p> <p>10 your interest in this estate of your father. You</p> <p>11 mentioned that -- I believe you testified that you</p> <p>12 believe you inherit from your dad Simon's estate, is that</p> <p>13 accurate.</p> <p>14 A I do.</p> <p>15 Q Okay. And you don't want to have Ted be the</p> <p>16 personal representative of the curator because your</p> <p>17 interests are adverse to Ted's?</p> <p>18 A And because Ted's been involved in a lot of</p> <p>19 confidential information, I discussed with you on the</p> <p>20 phone.</p> <p>21 Q The truth is, is that you've asked Ted for</p> <p>22 money to live on and Ted won't give you that money?</p> <p>23 A That's your interpretation.</p> <p>24 THE COURT: Listen to the question. Try to</p> <p>25 answer it.</p>	<p style="text-align: right;">123</p> <p>1 done this before and you're experienced in this.</p> <p>2 I've warned you --</p> <p>3 THE WITNESS: I have never done it.</p> <p>4 THE COURT: Listen to the question. Okay.</p> <p>5 You don't understand the question, ask that it be</p> <p>6 repeated. Mr. Feaman is a really good trial</p> <p>7 lawyer. He's not objecting. That means it's a</p> <p>8 proper question. And limit your answer to the</p> <p>9 question. But when you do a narrative, I block it</p> <p>10 out. I don't pay attention to anything you're</p> <p>11 saying. You are not helping your cause. You're</p> <p>12 hurting yourself.</p> <p>13 THE WITNESS: I'm sorry, it's my first time</p> <p>14 ever being --</p> <p>15 THE COURT: So it's your first time wanting</p> <p>16 to hurt yourself.</p> <p>17 THE WITNESS: No, now that you've explained</p> <p>18 it --</p> <p>19 THE COURT: So your answer is stricken. If</p> <p>20 the reporter will read back the question, we can</p> <p>21 get a clean answer. And don't give a rambling</p> <p>22 narrative, please.</p> <p>23 THE WITNESS: Okay. I apologize.</p> <p>24 (Record read)</p> <p>25 THE WITNESS: Yes, sir.</p>
<p style="text-align: right;">122</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q Yes or no? Is that a yes?</p> <p>3 A I have been forced to ask Ted, yes.</p> <p>4 Q You've asked Ted to pay your -- the expenses of</p> <p>5 your residence?</p> <p>6 A What happened was --</p> <p>7 THE COURT: No. No. Listen. Stop. Stop.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 THE COURT: Listen. Your question has to be</p> <p>10 narrow to the -- your answer has to be narrow to</p> <p>11 the --</p> <p>12 THE WITNESS: I was directed to Ted to pay</p> <p>13 those bills.</p> <p>14 BY MR. PANKAUSKI</p> <p>15 Q And Ted has refused?</p> <p>16 A Ted has denied that Janet Craig at</p> <p>17 Oppenheimer directed that he volunteer to pay the</p> <p>18 bills. And I was supposed to deal with Ted only, since</p> <p>19 she had -- he had volunteered to become manager of a</p> <p>20 company which he didn't have legal rights to and she</p> <p>21 didn't have the --</p> <p>22 THE COURT: Stop. Stop.</p> <p>23 THE WITNESS: Sorry, Your Honor.</p> <p>24 THE COURT: Your answer is stricken. So,</p> <p>25 Eliot, here's the last -- you know, I mean, you've</p>	<p style="text-align: right;">124</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q And Ted's refused to?</p> <p>3 A No.</p> <p>4 Q Okay. You've asked your brother Ted to pay</p> <p>5 your children's tuition?</p> <p>6 A I've asked him to pay the expenses of</p> <p>7 Bernstein Family Realty and the welfare --</p> <p>8 THE COURT: No. No. See, he didn't ask you</p> <p>9 about that.</p> <p>10 MR. FEAMAN: Wait. I have to object to the</p> <p>11 form. And it doesn't define Ted in what capacity.</p> <p>12 THE COURT: I don't know that I need a</p> <p>13 capacity for that question. It's a little</p> <p>14 different type of question. So the objection is</p> <p>15 overruled. But, again, Eliot, listen to the</p> <p>16 question. Answer it as asked.</p> <p>17 Go ahead. Let's read it back.</p> <p>18 (Record read)</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. PANKAUSKI</p> <p>21 Q You are not currently employed?</p> <p>22 A No, I am currently employed.</p> <p>23 Q Where are you employed?</p> <p>24 MR. FEAMAN: Relevancy.</p> <p>25 THE COURT: Yeah, tell me the relevancy.</p>

125	<p>1 MR. PANKAUSKI: Impeachment.</p> <p>2 THE COURT: Impeachment of what?</p> <p>3 MR. PANKAUSKI: This isn't about his brother</p> <p>4 not serving in a fiduciary capacity. It's about</p> <p>5 his wanting for money. He's unemployed. He keeps</p> <p>6 asking for money.</p> <p>7 MR. FEAMAN: Objection. Move to strike.</p> <p>8 THE COURT: Okay. So the objection to that</p> <p>9 last question is sustained.</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q You are blogging and speaking publicly about</p> <p>12 the issues that you communicated to my law firm?</p> <p>13 A Anything public I communicate to people who</p> <p>14 are watching the public record.</p> <p>15 Q Is that a yes?</p> <p>16 A Ask the question again, please.</p> <p>17 MR. PANKAUSKI: Sure. The court reporter, if</p> <p>18 you could read it back, please.</p> <p>19 (Record read)</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. PANKAUSKI</p> <p>22 Q Okay. May I approach the witness?</p> <p>23 THE COURT: You may.</p> <p>24 BY MR. PANKAUSKI</p> <p>25 Q Mr. Bernstein, I'm going to hand you a</p>	127	<p>1 Q Is that a no?</p> <p>2 A I don't believe so.</p> <p>3 Q You were contacted by a firm on behalf of Ted</p> <p>4 Bernstein to ask you to stop blogging about this case?</p> <p>5 MR. FEAMAN: Objection to the form. It's not</p> <p>6 a question, it's a statement.</p> <p>7 THE COURT: Restate what you're saying in the</p> <p>8 form of a question.</p> <p>9 BY MR. PANKAUSKI</p> <p>10 Q Were you contacted by a firm on behalf of Ted</p> <p>11 Bernstein to request that you stop blogging about this</p> <p>12 case?</p> <p>13 A I do not believe so.</p> <p>14 Q You have seen this document that's in front of</p> <p>15 you before?</p> <p>16 A No.</p> <p>17 Q It's your testimony that you have never seen</p> <p>18 the document that I just placed in front of you before,</p> <p>19 ever?</p> <p>20 A No.</p> <p>21 THE COURT: Wait. But, no, I'm not sure your</p> <p>22 testimony is you have seen it before, or you</p> <p>23 haven't?</p> <p>24 THE WITNESS: I've never seen this document</p> <p>25 before.</p>
126	<p>1 document -- would you like a copy?</p> <p>2 MR. FEAMAN: If you have one.</p> <p>3 Thank you.</p> <p>4 MR. PANKAUSKI: Your Honor, may I approach?</p> <p>5 THE COURT: This will be Number 5?</p> <p>6 MR. PANKAUSKI: Yes.</p> <p>7 THE COURT: Okay.</p> <p>8 (Thereupon, Exhibit Number 5 was marked</p> <p>9 for identification)</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q This is a blog about Ted Bernstein?</p> <p>12 A Looks like it.</p> <p>13 Q And Judge Colin?</p> <p>14 A Yeah.</p> <p>15 Q And Don Tescher?</p> <p>16 A Yeah.</p> <p>17 Q This is a blog that you published on the</p> <p>18 Internet?</p> <p>19 A Incorrect.</p> <p>20 Q Who published this blog?</p> <p>21 A Looks like investigative blogger Crystal Cox.</p> <p>22 Q You were contacted by your brother Ted</p> <p>23 beseeching you, asking you to stop blogging about this</p> <p>24 case.</p> <p>25 A I was?</p>	128	<p>1 THE COURT: Okay.</p> <p>2 BY MR. PANKAUSKI</p> <p>3 Q You know a blogger known as Crystal Cox?</p> <p>4 A I do.</p> <p>5 Q And you provide Crystal Cox with information</p> <p>6 about this case?</p> <p>7 A About several cases.</p> <p>8 Q In fact, the blog that's in front of you, the</p> <p>9 document that I just handed you, that is the product of</p> <p>10 information which you provided to blogger Crystal Cox?</p> <p>11 A I have no idea. She could have got it</p> <p>12 anywhere. Most of it's public information, looks like</p> <p>13 to me. I can take a look.</p> <p>14 Q I didn't ask you where -- about the source.</p> <p>15 What I'm trying to tell -- trying to ask you is that the</p> <p>16 information that Crystal Cox blogged on, that's in front</p> <p>17 of you, came from information which you provided to</p> <p>18 Crystal Cox?</p> <p>19 A No.</p> <p>20 Q It didn't?</p> <p>21 A Not that I know of.</p> <p>22 Q You have provided Crystal Cox information about</p> <p>23 Judge Colin.</p> <p>24 A I've provided information --</p> <p>25 MR. FEAMAN: Objection to the form.</p>

<p style="text-align: right;">129</p> <p>1 THE COURT: What's wrong with the form? 2 MR. FEAMAN: It's a statement. You have 3 provided information. You have to ask a question. 4 THE COURT: Do it in the form of a question. 5 BY MR. PANKAUSKI 6 Q Have you provided information to Crystal Cox 7 about Judge Colin? 8 A I believe so. 9 Q About this estate? 10 A I believe so. 11 Q About your mother and father's wills and 12 trusts? 13 A I don't recall. 14 Q About Ted Bernstein? 15 A Yes. 16 Q And after you provided this information to 17 Crystal Cox, Crystal Cox blogged about those things? 18 A Okay. 19 Q That's a yes? 20 A That was a statement, wasn't it? 21 Q Okay. No, that was a leading question. 22 A Okay. 23 Q Do you need it read back to you? 24 MR. FEAMAN: Objection to the form. 25 THE COURT: Go ahead.</p>	<p style="text-align: right;">131</p> <p>1 Q Okay. And was Mr. Ted Bernstein subsequently 2 appointed as personal representative of Shirley 3 Bernstein's estate after you spoke to him? 4 A Yes, sir. 5 Q Do you still wish to remove Ted Bernstein as 6 personal representative of the estate of Shirley 7 Bernstein? 8 A Yes, sir. 9 Q Do you wish to remove him as trustee of -- in 10 what -- as the apparent trustee of your father's trust? 11 A Yes, sir. 12 Q Okay. Did you discuss that with Mr. Pankauski? 13 A Yes. 14 MR. FEAMAN: No further questions. 15 THE COURT: Okay. 16 All right. Thanks. You can step down, 17 Eliot. 18 MR. FEAMAN: The e-mails are in, so I -- 19 THE COURT: One through 4 is in. 20 MR. FEAMAN: So there is no need for me to 21 call Candice Bernstein to authenticate them. 22 THE COURT: They are in evidence. 23 Next witness. 24 MR. FEAMAN: No other witnesses. 25 THE COURT: Okay. Mr. Pankauski, you're</p>
<p style="text-align: right;">130</p> <p>1 MR. PANKAUSKI: Could you please read it 2 back, Mr. Reporter. 3 (Record read) 4 BY MR. PANKAUSKI 5 Q Okay. It was a yes or no question. 6 A It was? Okay. Appears she blogged about 7 certain of those things. 8 MR. PANKAUSKI: Thank you, Your Honor. I 9 don't have any more questions. 10 THE COURT: Number 5 is ID only, not in 11 evidence. 12 MR. PANKAUSKI: Thank you. 13 THE COURT: Okay. 14 MR. FEAMAN: I have one question. 15 THE COURT: Redirect, yes. 16 REDIRECT EXAMINATION 17 BY MR. FEAMAN 18 Q Mr. Eliot Bernstein -- 19 A Yes, sir. 20 Q -- in September of 2013, about the time that 21 the e-mails went back and forth from Mr. Pankauski's 22 office to your wife, did you talk to Mr. Pankauski about 23 opposing Mr. Ted Bernstein as personal representative of 24 the estate of Shirley Bernstein? 25 A Yes, sir.</p>	<p style="text-align: right;">132</p> <p>1 first. 2 MR. PANKAUSKI: I'm going to testify, 3 Mr. Rose is going to examine me. 4 THE COURT: Okay. 5 MR. PANKAUSKI: Thank you. 6 MR. ROSE: Your Honor, is it okay if I 7 examine from the counsel table? 8 THE COURT: Sure. I need -- I do need the 9 Exhibits 1 through 3. I only have -- 10 MR. PANKAUSKI: Yes. One, two, three. 11 Four should be here. 12 Thank you, Your Honor. 13 (Thereupon, JOHN PANKAUSKI was duly sworn 14 by the court) 15 DIRECT EXAMINATION 16 BY MR. ROSE 17 Q State your name for the record. 18 A John Pankauski. 19 Q Do you have any -- did you bring any papers 20 with you today? 21 A I did. I have an affidavit that I've had 22 executed, that I'd like to file with the court, because 23 they -- a case that says affidavits should be filed, 24 and it's my understanding that's part of the procedure. 25 I'd like to provide a copy to counsel and have it filed</p>

<p style="text-align: right;">133</p> <p>1 and introduced into evidence.</p> <p>2 THE COURT: You can file the affidavit and it</p> <p>3 goes into the court file. You can give a copy to</p> <p>4 Mr. Feaman and to Eliot Bernstein.</p> <p>5 THE WITNESS: Okay. Thank you, Your Honor.</p> <p>6 MR. FEAMAN: I object to it as evidence.</p> <p>7 THE COURT: Yeah. No, it's --</p> <p>8 MR. FEAMAN: It's hearsay and it's</p> <p>9 cumulative.</p> <p>10 THE COURT: You can file it. I don't know</p> <p>11 what I'm going to do with it, but you're there to</p> <p>12 testify live. So go ahead. But you can file</p> <p>13 that, the original with the clerk, and give</p> <p>14 copies -- I'll let you give two copies for</p> <p>15 Mr. Feaman so he can get one for Eliot.</p> <p>16 THE WITNESS: Thank you, I'll give those to</p> <p>17 him now.</p> <p>18 BY MR. ROSE</p> <p>19 Q Can you describe and explain to the court how</p> <p>20 you came to represent Ted Bernstein?</p> <p>21 A I did. I was contacted by you on a Sunday</p> <p>22 morning in January, I was on my way to the Estate</p> <p>23 Planning Institute in Orlando, and you had asked me to</p> <p>24 change my travel plans to meet with you and Mr. Ted</p> <p>25 Bernstein in your office downtown.</p>	<p style="text-align: right;">135</p> <p>1 did you continue on with your trip to wherever you were</p> <p>2 going while we interrupted it?</p> <p>3 A After I met with you and Mr. Ted Bernstein, I</p> <p>4 did, I went up to Orlando.</p> <p>5 Q Okay. Did you subsequently conduct an</p> <p>6 investigation to determine whether there was anything</p> <p>7 that would prohibit you from representing my client, Ted</p> <p>8 Bernstein, as a fiduciary in these matters now that his</p> <p>9 lawyers had indicated there was a problem and they would</p> <p>10 need to withdraw?</p> <p>11 A Yes, I did. What I did is I went back and I</p> <p>12 spoke to my office, I spoke to the person who does our</p> <p>13 intake. When a prospective client calls our office,</p> <p>14 they do not speak with an attorney, they speak with a</p> <p>15 person who does the intake. I spoke with that person.</p> <p>16 She said that she did recall this issue about a</p> <p>17 backdated notary clause. She went on her computer. I</p> <p>18 examined her computer screen with her. She revealed to</p> <p>19 me that Candice, the wife of Eliot Bernstein, had</p> <p>20 spoken to her about a matter involving Don Tescher and</p> <p>21 a backdated notary clause. I had her review her</p> <p>22 e-mails. I had her review whatever documents that were</p> <p>23 sent. She confirmed that the only documents that were</p> <p>24 sent were public documents, wills and trusts. I think</p> <p>25 there was a deposition transcript from a hearing.</p>
<p style="text-align: right;">134</p> <p>1 Q Did we give you any indication as to the</p> <p>2 subject matter of the meeting?</p> <p>3 A You did. There was a great sense of urgency</p> <p>4 and distraught. You had said that you were involved in</p> <p>5 an estate matter that had been -- you had just been</p> <p>6 informed -- your client had just been informed that</p> <p>7 somebody evidently fabricated a trust amendment and</p> <p>8 you'd requested to speak to me about that.</p> <p>9 Q Did we, in fact, meet that day?</p> <p>10 A We did. You met with me and your client, Ted</p> <p>11 Bernstein, in your office. You began telling me about</p> <p>12 an estate case down here involving Don Tescher. And</p> <p>13 you told me that there had been this backdated or</p> <p>14 post-death dated waiver or notary clause. And at that</p> <p>15 time I conveyed to you that -- I asked you the names of</p> <p>16 all the parties. None of the party's names rang a</p> <p>17 bell. But when you mentioned Mr. Tescher and a</p> <p>18 backdated notary clause, I told you that somebody had</p> <p>19 called our office regarding Mr. Tescher and a</p> <p>20 malpractice claim involving a backdated notary clause.</p> <p>21 And I conveyed to you and Ted that I would need to</p> <p>22 conduct an investigation as to whether I owed any</p> <p>23 duties to a prospective client and the nature of that</p> <p>24 communication with my law firm.</p> <p>25 Q Did you -- did you have -- after our meeting,</p>	<p style="text-align: right;">136</p> <p>1 After that, I went into my own computer, I looked at my</p> <p>2 e-mails. I didn't see any e-mails about this subject</p> <p>3 matter. I looked in my computer and what I saw was a</p> <p>4 one take -- one-page intake sheet from the person who</p> <p>5 does my intakes saying she spoke with Candice on a</p> <p>6 particular date in September. And I also found what is</p> <p>7 Exhibit 3, which is what we call a no-rep letter. It's</p> <p>8 a letter that my office sent to Eliot Bernstein on</p> <p>9 September 23, 2003 [sic]. It's a standard practice in</p> <p>10 our firm that when a prospective client calls us and we</p> <p>11 are not retained, we send out a do-not-rep letter.</p> <p>12 And, basically, it says that you contacted us. You</p> <p>13 decided not to hire us. We're not your lawyers and you</p> <p>14 are not a client. This letter went out from my office</p> <p>15 to Eliot Bernstein on September 24, 2013.</p> <p>16 Q Can you -- by looking at Exhibits 1 and 2, can</p> <p>17 you tell the date the documents were sent to you?</p> <p>18 A Yes, I just need to get them.</p> <p>19 Q Okay.</p> <p>20 A May I, Your Honor? Yeah, Candice and Eliot</p> <p>21 did not e-mail me. They didn't even know my e-mail</p> <p>22 address. They e-mailed Michelle at my firm, the intake</p> <p>23 person. I had one conversation with Eliot, not two.</p> <p>24 It wasn't during the day, it was during the evening.</p> <p>25 And so Exhibit 1 was an e-mail from Michelle to, I</p>

<p style="text-align: right;">137</p> <p>1 guess, it's Eliot's wife, Candice, on Thursday, 2 September 19, 2013. Exhibit 2 is an e-mail to Michelle 3 from Candice on Friday, September 20, 2013. The 4 September 20th is an evening e-mail from Candice to 5 Michelle, 7:10 p.m., I think that's why they're 6 confused about speaking with me in the evening. I 7 never spoke with Candice. I only spoke with Eliot once 8 and that was in the afternoon. 9 Q Do you know which day -- was it the 19th, the 10 20th or a different day, that you actually spoke with 11 him? 12 A I don't. I remember where I was. I was -- I 13 was in my office. I was at my desk. I had my headset 14 on. I don't have a headset at home. I spoke with 15 Mr. Bernstein and I remember it because he wanted to 16 sue Don Tescher. And I know Don Tescher's name. I 17 don't really know Mr. Spallina, but I know Don Tescher. 18 And he was talking about a malpractice case and he was 19 talking about a backdated notary. And this was like 20 out of a novel, so I do remember those facts. But the 21 reason for the call was to discuss a malpractice 22 action. And I even referenced that in Exhibit 3; I 23 tell him that there is a two-year statute of 24 limitations for malpractice. He did mention that the 25 malpractice was committed within the estate of his mom</p>	<p style="text-align: right;">139</p> <p>1 ten minutes I can tell whether they're adverse to an 2 existing client, what the legal issue is, and whether I 3 can help them or not. I try to politely then shift the 4 conversation to the sad realities of the business of 5 law, whether you can afford us or not. When they can't 6 afford us, the conversation gets very short. And 7 that's what happened with my conversation with Eliot 8 Bernstein. It didn't last an hour. It didn't last a 9 half an hour. It lasted less than that. And it was 10 clear that while the facts are interesting, he was not 11 going to hire us. He didn't have the money to hire us. 12 He did not reveal any confidential information to me. 13 What he did say was that there was a malpractice case, 14 there was two matters involving mom and dad's estate, 15 and his focus was Don Tescher. 16 Q If you look at the letter that you wrote 17 Mr. Bernstein declining to represent him, what's the date 18 of that? 19 A September 24, 2013. 20 Q So Friday, the 20th, was -- is the date on 21 Exhibit 2. And by the following Tuesday, the 23rd, you 22 sent him a letter declining to represent him? 23 A (witness nods head). Yes. 24 Q Okay. Did -- 25 A Was September 24th a Monday?</p>
<p style="text-align: right;">138</p> <p>1 or his dad. We didn't talk about removing Ted as 2 trustee. What he told me was, he had been calling up 3 lawyers and he couldn't find anyone to take his case. 4 And that he had called me -- and what he wanted to know 5 was, do you have a conflict with Don Tescher? Will you 6 sue Don Tescher? I said, I don't have a conflict with 7 Don Tescher. I know the gentleman, but he's not a 8 friend. I don't do any business with him. So I was 9 open to that. Mr. Bernstein later contended that I 10 asked for a \$200,000 retainer. I have never in my life 11 asked for a \$200,000 retainer. I hope to get there one 12 day, but I'm not there just yet. Our standard 13 retainer -- and we don't even use the word retainer -- 14 it's initial fee, it's \$15,000. When Mr. Bernstein -- 15 Eliot Bernstein -- to his credit -- told me that he 16 couldn't afford to pay us and he wanted this on some 17 type of a contingency, the conversation got short very 18 fast. Our firm receives literally sometimes dozens of 19 calls a month. And if I listen to everyone's story and 20 read every single document that they want us to read, I 21 would have no time to practice law. So I have a 22 practice, I have a custom, I have a procedure, I do not 23 spend a lot of time on the phone with a prospective 24 client. I give them up to 30 minutes free of charge 25 and that's it. The reason for that is within five to</p>	<p style="text-align: right;">140</p> <p>1 Q Friday the -- if you look -- 2 A Friday was the 20th, Saturday was the 21st, 3 Sunday is the 22nd, Monday is 23rd. So this went out a 4 Tuesday, September 24th. So if Candice communicated 5 with Michelle on September 20th, I probably spoke with 6 Eliot on Monday or Tuesday because I remember my -- my 7 immediate reaction to Michelle, who does my intake, 8 was, there is nothing here to represent. We are not 9 representing Eliot Bernstein, he can't afford us. 10 Q Could you just describe generally the nature of 11 your law practice? 12 A Yeah. We handle estate litigation and 13 administration. Predominantly restricted to estates, 14 trusts, guardianships, wills, inheritances. That's all 15 we do. 16 Q Are you aware that our law firm does not do 17 trusts and estate administration work? 18 A Yes, that's why you called on me. You 19 originally went to another lawyer, but he was 20 conflicted out, and that's why you've asked our firm to 21 assist Ted Bernstein with the administration of trusts 22 and estates. 23 Q Before you agreed to become the lawyer for Ted 24 Bernstein in this case, did you undertake, in your view, 25 a thorough and detailed analysis of your ethical duties</p>

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1 that might be owed to Mr. Eliot Bernstein as a
 2 prospective client?
 3 A I did. I did that twice. I mean, I did it
 4 when you contacted me and I met with Mr. Bernstein
 5 subsequently to our initial meeting, which was on a
 6 Sunday. That's the procedure and that's the
 7 investigation that I conducted with Michelle in my
 8 office. And then subsequently I filed a motion to have
 9 Mr. Ted Bernstein appointed as curator. Within 48
 10 minutes I received an e-mail from Eliot Bernstein
 11 saying, hey, Pankauski, you can't represent Ted. I'm
 12 going to disqualify you. When that happened, I went
 13 back to Michelle and I said we need to discuss this
 14 again. We re-examined everything that I've already
 15 described. I found no e-mails from Ted Bernstein or
 16 Candice Bernstein. I felt -- I found no confidential
 17 information. I found no documents that were -- excuse
 18 me -- I found no documents that were Eliot Bernstein's.
 19 The only documents that Eliot Bernstein provided were
 20 someone else's that had been shared with others, like
 21 wills and trusts. I, again, came to the conclusion
 22 that my representation of Ted Bernstein would not
 23 violate any duty that I owed a prospective client; such
 24 as, Eliot Bernstein. I reviewed 4-1.18. I called the
 25 ethics hotline of the Florida Bar. I also did a

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1 Westlaw search for cases and authority regarding this
 2 issue.
 3 Q You mentioned an e-mail you received from
 4 Mr. Bernstein. Do you have a copy of that with you?
 5 A I do. There's two of them.
 6 Q May I approach, Your Honor?
 7 A I've got a February 10th, 2014 from Eliot
 8 Bernstein to me at 5:52 p.m.
 9 Q Do you have more than one copy of that?
 10 A There should be a few copies there. Oh, you
 11 know what, I have the extra copy.
 12 So on Monday, February 10th, 2014, Eliot
 13 Bernstein's --
 14 Q Before you do that, what number are we up to,
 15 6?
 16 A This would be --
 17 THE COURT: Six.
 18 MR. ROSE: Can we mark this as 6 for
 19 identification, Your Honor?
 20 (Thereupon, Exhibit Number 6 was marked
 21 for identification)
 22 THE COURT: Yes.
 23 BY MR. ROSE
 24 Q Is this an e-mail you received from Eliot
 25 Bernstein on February 10th?

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1 A Yes, 2014.
 2 MR. ROSE: I move this into evidence, Your
 3 Honor?
 4 THE COURT: Any objection?
 5 MR. FEAMAN: No objection.
 6 THE COURT: Okay. Number 6.
 7 (Thereupon, Exhibit Number 6 was marked in
 8 evidence)
 9 BY MR. ROSE
 10 Q If you look at Exhibit Number 6, Mr. Pankauski,
 11 this was received by you at 5:52 p.m. on February 10th?
 12 A Yes.
 13 Q And if you turn to the Page 2, it appears to be
 14 in response to a letter you sent Mr. Bernstein on
 15 February the 10th at 5:06 p.m.?
 16 A Yes. The letter was, I believe, the motion
 17 to appoint Ted Bernstein as curator.
 18 Q Forty-six minutes later you get this e-mail
 19 from Mr. Bernstein?
 20 A Yes.
 21 Q And in response to receiving this e-mail you
 22 undertook the second investigation you just told us
 23 about?
 24 A Correct.
 25 Q Are there things in this e-mail that you find

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1 to be inaccurate?
 2 A Yes. There's a number of them. In his
 3 second line, he says I -- the end of the first line,
 4 beginning of the second line -- I sent you over private
 5 and confidential, highly sensitive information. He
 6 didn't. He never communicated with me. He didn't send
 7 over any confidential information. He didn't send me
 8 anything. His wife Candice sent some of Simon and
 9 Shirley's wills and trusts to Michelle in my office.
 10 He also said we've had, quote, several correspondences
 11 on the phone, close quote. We didn't. Candice called
 12 Michelle. I spoke with Eliot Bernstein one time. He
 13 thinks it was in the evening, it was in the afternoon
 14 before the sun was setting. He said there was a series
 15 of e-mails with you. That's inaccurate. Eliot
 16 Bernstein never sent an e-mail to me, nor did Candice.
 17 And several members of your office. Inaccurate. He --
 18 his wife, Candice, sent e-mails to Michelle who handles
 19 my intake. He also said -- he says, complete removal
 20 of any papers filed in conflict -- strike that. He
 21 says, I'm uncertain how you can forget our meetings.
 22 We never had any meetings. We had one phone
 23 conversation for less than 30 minutes. He says, that
 24 you even told me and Candice once you reviewed the
 25 volumes of materials sent to you. I never spoke with

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1 Candice. He didn't send me volumes of material. He
 2 sent Michelle those four or five documents that
 3 Mr. Eliot Bernstein previously identified when he
 4 testified.
 5 Q Did you ever agree to review the materials he
 6 sent you?
 7 A No.
 8 Q Did you, in fact, ever review the materials he
 9 sent you?
 10 A I did not.
 11 Q Once you sent the letter on February 24
 12 declining to represent him, you took no further action?
 13 A Correct.
 14 Q I didn't mean to interrupt you, you can
 15 continue, if you see anything else in the letter.
 16 A Yes. He says you also proposed a retainer of
 17 \$200,000. I've never proposed a retainer of \$200,000.
 18 Our retainers -- our standard retainer is \$15,000.
 19 Q You asked Mr. Bernstein that question today and
 20 he denied that he indicated you demanded the \$200,000
 21 retainer?
 22 MR. FEAMAN: Object to form. Repetitive.
 23 THE COURT: Sustained.
 24 BY MR. ROSE
 25 Q Anything else in the letter that's inaccurate?

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1 A Just a moment, please. He said, I informed
 2 you I would be working on raising those monies to
 3 retain you. Absolutely not. He never told me that.
 4 He said he didn't have the money. That's why the
 5 conversation got cut short. That's why we sent him the
 6 September 24, 2013 letter saying we don't represent
 7 you. He said -- he references your promise of
 8 confidentiality. I've never made a promise of
 9 confidentiality to anybody. And I certainly didn't
 10 make any promise of confidentiality to Mr. Eliot
 11 Bernstein.
 12 Q Did you respond to Mr. Eliot Bernstein's
 13 e-mail?
 14 A I did.
 15 Q May I approach. I --
 16 A I responded to him on February 11th, the next
 17 day, I believe, just before 6 p.m. And that's
 18 reflected on a two-page document that's in front of me.
 19 And then Mr. Eliot Bernstein responded to that response
 20 on Wednesday, February 12, 2014.
 21 MR. ROSE: I would move this in evidence as
 22 Exhibit 7, Your Honor.
 23 THE COURT: Any objection?
 24 MR. FEAMAN: No objection.
 25 MR. ROSE: Would you like a copy, Your Honor?

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1 THE COURT: Yeah, I would.
 2 MR. ROSE: I apologize for not having the
 3 prior one.
 4 (Thereupon, Exhibit Number 7 was marked in
 5 evidence)
 6 BY MR. ROSE
 7 Q So 5:23 on February 11th, the day after you
 8 received the e-mail from Mr. Bernstein, you wrote him and
 9 indicated that you disagreed with his objection to you?
 10 A I did. I said, I disagree with the substance
 11 and content of your e-mail. My firm intends to remain
 12 as counsel to your brother, Ted.
 13 Q You received a response from Eliot Bernstein
 14 the following day at 3:07 in the afternoon?
 15 A Yeah. And you know who he cc'd on that?
 16 Crystal Cox, the blogger.
 17 Q I guess he cc'd Crystal L. Cox and Crystal L.
 18 Cox at liquidating trustee?
 19 A Yes.
 20 Q Have you ever heard that name before?
 21 A No.
 22 Q Have you seen information about you published
 23 on the Internet?
 24 A I have. Nothing --
 25 MR. FEAMAN: Objection, relevancy.

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1 THE COURT: Yeah. Sustained.
 2 THE WITNESS: I have never known --
 3 THE COURT: Sustained. I sustained the
 4 objection. Next question.
 5 BY MR. ROSE
 6 Q Are there any inaccuracies in Mr. Bernstein's
 7 e-mail to you dated February 12 at 3:07, which is in
 8 evidence as Exhibit 7?
 9 A Yes. His first line of his e-mail of
 10 Wednesday, February 12, 2014 to me, he says, I think
 11 applied to our discussions, plural, to retain your
 12 firm. We didn't have discussions. Candice spoke to my
 13 intake person. I spoke with Eliot once, for less than
 14 a half an hour. He talks about the transfer of highly
 15 confidential sensitive information and strategies. I
 16 discussed no trial strategy with Eliot Bernstein. I
 17 know that when a prospective client calls up, that my
 18 responsibility and custom and practice is to take in a
 19 minimum amount of facts to determine whether I can
 20 provide assistance to that client or not. Trial
 21 strategies comes later. Eliot Bernstein did not share
 22 any trial strategies with me or any litigation
 23 strategies with me. He says, I believe we had several
 24 phone calls with you directly and others with your
 25 staff. That's inaccurate. There were not several

<p style="text-align: right;">149</p> <p>1 phone calls. He had one call with me. Then he says, 2 including several lengthy conversations between my wife 3 and your employees. And, again, a large amount of 4 information and strategies were given to members of 5 your office as well. Entirely inaccurate. His wife 6 sent my intake person copies of Shirley's and Simon's 7 estate planning documents. There was no large amount 8 of information. He didn't speak with any employees 9 other than me once. I don't think he even spoke with 10 Michelle, I think that was Candice. Again, he says I 11 promised him confidentiality. I didn't do that. 12 And that concludes my testimony about this 13 e-mail, Exhibit 7. 14 THE COURT: You need to really move it along, 15 we're going to run out of time. 16 THE WITNESS: Okay. 17 BY MR. ROSE 18 Q Did you have a conversation with Mr. Feaman 19 outside of the courtroom yesterday at the judge's 20 request? 21 A I did. And I have my notes that I took 22 contemporaneous with that conversation. 23 MR. FEAMAN: Objection, relevancy. 24 THE COURT: Well, hold on. 25 MR. FEAMAN: Materiality.</p>	<p style="text-align: right;">151</p> <p>1 Q In what capacity do you represent Ted 2 Bernstein? 3 A I represent him in his fiduciary capacity. 4 Ted Bernstein is the trustee of his dad Simon's rev 5 trust. He's the PR of his mom's estate. He's the 6 trustee of his mom's trust. 7 THE COURT: I got to write this down. 8 THE WITNESS: Sorry, Your Honor. 9 THE COURT: Trustee of Simon's. 10 THE WITNESS: Simon's trust. 11 THE COURT: Okay. 12 THE WITNESS: Personal representative of 13 Shirley's estate, trustee of Shirley's trust. 14 THE COURT: Okay. 15 THE WITNESS: And he's seeking to be 16 appointed as personal representative of Simon's 17 estate. 18 THE COURT: Okay. Got it. 19 BY MR. ROSE 20 Q Do you represent Mr. Bernstein individually in 21 any matters? 22 A I do not. 23 Q Do you anticipate representing Mr. Bernstein 24 individually in any matters? 25 A I do not.</p>
<p style="text-align: right;">150</p> <p>1 THE COURT: Well, the only thing right now is 2 the answer that he took notes. I don't even know 3 what the next question is, so let's wait. 4 MR. ROSE: I'll mark this as Exhibit 8 -- may 5 I approach? 6 THE COURT: Okay. I don't want to see notes 7 yet. 8 BY MR. ROSE 9 Q Are these notes you took yesterday in 10 discussion with Mr. Feaman? 11 MR. FEAMAN: I object to any testimony 12 concerning notes that he took in a conversation 13 that you requested us to have out in the hall 14 yesterday, Your Honor. 15 THE COURT: Okay. So objection sustained. 16 MR. FEAMAN: Can I just proffer? 17 THE COURT: That was not for the purpose of 18 using that conversation as something to fully 19 regurgitate either side's idea of what was said. 20 It wasn't recorded. It was not in my presence. 21 There was no court reporter there. The purpose 22 was to be informal, so that we'd be able to 23 determine whether this hearing was necessary. 24 So objection sustained. 25 BY MR. ROSE</p>	<p style="text-align: right;">152</p> <p>1 Q Are you familiar with the estate plan of 2 Shirley Bernstein and Simon Bernstein? 3 A Yes. 4 Q Do you want to -- can you tell us the short 5 version of how you -- 6 A Eliot doesn't inherit. I mean, you gave 7 me -- 8 MR. FEAMAN: Objection, relevancy. 9 THE COURT: Well, it goes to the issue of 10 whether Eliot is an interested person under 731. 11 So that's relevant. 12 MR. FEAMAN: Okay. Go ahead. 13 THE WITNESS: Eliot doesn't inherit under 14 Simon's estate plan. You provided those documents 15 to me, it's my understanding that his mom and dad 16 provided for him outside of those estate plans 17 through the use of trusts and gifts. 18 THE COURT: You folks really need to wrap it 19 up. I want to try to finish this and then, 20 depending on what I rule, deal with the other 21 issue, so you can have some direction from me. So 22 time is of the essence. 23 BY MR. ROSE 24 Q You feel you have learned anything from -- from 25 your one telephone conference with Eliot Bernstein in any</p>

<p style="text-align: right;">153</p> <p>1 way compromises his position or materially disadvantages 2 him when you will be representing Ted as the beneficiary 3 in these matters? 4 A Absolutely not. 5 Q Do you anticipate there being some litigation 6 in this trust? 7 A Yeah, I do, on the trust. Not necessarily 8 the estate. In the trust. I think that Ted is going 9 to file a dec action and ask Judge Colin for 10 instructions on how property under the trust should be 11 distributed or not distributed. 12 Q And as counsel, is it your intention to file a 13 dec action and follow the instructions of the court? 14 A Absolutely. 15 MR. ROSE: I have nothing further, Your 16 Honor. 17 THE COURT: All right. Mr. Feaman. 18 MR. FEAMAN: I'll try to be as brief as I 19 can. 20 THE COURT: Okay. Thanks. 21 CROSS EXAMINATION 22 BY MR. FEAMAN 23 Q If I understood your testimony, Mr. Pankauski, 24 are you taking the position that there is a difference 25 between documents received by your office that you didn't</p>	<p style="text-align: right;">155</p> <p>1 Q Now, the -- you actually spoke to this 2 particular prospective client, correct? 3 A Yes. 4 Q And you would agree with me that Mr. Eliot 5 Bernstein was, in fact, a prospective client, correct? 6 A Yes. 7 Q Okay. You said the focus was on Don Tescher. 8 But could you take a look at Exhibit 3? 9 A Sure. 10 Q That's your rejection letter right there? 11 A Yes. 12 Q The reference makes no reference to 13 Mr. Tescher, does it? It says, Estate of Shirley 14 Bernstein and Estate of Simon Bernstein, correct? 15 A Yes. 16 Q Only. And the documents that you received, 17 which are shown on Exhibit 2, which was the e-mail from 18 Candice Bernstein to Michelle of your office -- by the 19 way, how long has she worked for you? 20 A Oh, Michelle has been with us probably three 21 to four years. 22 Q Okay. And you received documents that included 23 the Shirley Bernstein trust, the Shirley Bernstein will, 24 back to 2008, correct? 25 A Michelle from my law office received those</p>
<p style="text-align: right;">154</p> <p>1 see and, therefore, you didn't see those documents? Are 2 you making a distinction? 3 A Yeah. The only distinction I'm making is in 4 the testimony from Mr. Eliot Bernstein; he said that he 5 sent me documents. He didn't. His wife sent documents 6 to my intake person. 7 Q All right. And so you are taking the position 8 that, therefore, you didn't see them? 9 A No, my position is I didn't read them. There 10 is no therefor. I didn't read those documents that he 11 sent -- that Candice sent to my intake person. 12 Q You don't deny your office received them? 13 A No, not at all. 14 Q And you are familiar, I would assume, with Rule 15 of Professional Conduct 4-5.3 (c) which states that 16 although paralegals or legal assistants may perform the 17 duties delegated to them by the lawyer without the 18 presence or active involvement of the lawyer, the lawyer 19 shall review and be responsible for the work product of 20 paralegals or legal assistants? You would agree with 21 that, correct? 22 A For existing clients, absolutely. Not for 23 prospective clients. There is no duty on my behalf to 24 review any number of things that come in from dozens of 25 prospects.</p>	<p style="text-align: right;">156</p> <p>1 documents on Exhibit 2. 2 Q Okay. And the Simon Bernstein Amended Trust of 3 2012, correct? 4 A Yes. 5 Q Have you now seen the Simon Bernstein original 6 trust? Before it was allegedly amended in 2012? 7 A The 2008? 8 Q I don't know. 9 A Yeah, when you say original, I don't know 10 what you mean by that. 11 Q Okay. 12 A I looked at Mr -- 13 Q The trust which this amendment purportedly 14 amends? 15 A I don't know if I've looked at it. I've 16 looked at Simon Bernstein's trust that Mr. Rose gave 17 me, I believe it's the 2012 document. 18 Q Now, you said you were familiar with the estate 19 plan. And all of the documents that are listed here 20 would be necessary documents that would make you familiar 21 with the estate plan, correct? 22 A Necessary, no. I believe the 2012 trust 23 amendment revokes all prior amendments, which would 24 make prior ones a non-issue. 25 Q There is also documents here that have no</p>

<p style="text-align: right;">157</p> <p>1 relationship to the -- as far as you can tell -- the 2 estate plan, like the Bernstein Holdings, LLC? 3 A I don't think that's accurate. It's my 4 understanding from Ted Bernstein and Mr. Rose that 5 Bernstein Holdings, LLC was an entity that Simon 6 created to own a house that Eliot lives in. So where 7 Eliot lives, that's actually owned by an LLC created by 8 his dad, Simon. And the members of the LLC are three 9 trusts. So I think that's all part of Simon's estate 10 plan, you know, that's one way he helped out Eliot. 11 Q By your cross-examination of Mr. Eliot 12 Bernstein, when you asked about whether he had asked Ted 13 Bernstein for money, that would be money that would be 14 due either Eliot Bernstein's children or Eliot Bernstein 15 through those trusts, correct? 16 A I don't know if they're due through that 17 trust. It's my understanding the residence that Eliot 18 lives in is owned in the LLC, which is responsible for 19 paying the real estate taxes, the maintenance and 20 everything like that. I think Eliot Bernstein asked 21 the trustees of those trusts for money and they've run 22 out of money, so he asked Ted for more money. 23 Q And the LLC is, in fact, the Bernstein 24 Holdings, LLC? 25 A Yes.</p>	<p style="text-align: right;">159</p> <p>1 Bernstein. 2 Q So even though you didn't learn about it then, 3 they still sent to you the Bernstein Holdings, LLC for a 4 reason I guess you have no idea, is that right? 5 A Yeah. I don't know why Eliot's wife, 6 Candice, sent Michelle Bernstein Holdings, LLC other 7 than she wanted someone to review them. 8 Q That's certainly -- I'm sorry, I don't mean to 9 interrupt -- 10 A That's all right, you're doing a great job. 11 You know, when prospective probate clients call you, 12 they won't do a document dump. They want to open up, 13 they want to talk to you for hours, and they want you 14 to read everything in the world. We don't do that. We 15 don't have the time or the patience to do it. 16 Q You would agree with me that the Bernstein 17 Holdings, LLC certainly has nothing to do with the 18 malpractice action against Don Tescher, isn't that 19 correct? 20 A I wouldn't say absolutely, no. I'm not 21 trying to be evasive. I don't think that's an element 22 of the purported malpractice by Tescher and Spallina. 23 Q Okay. Thanks. 24 A Sure. 25 THE COURT: All right.</p>
<p style="text-align: right;">158</p> <p>1 Q Correct? 2 A Yes. 3 Q Okay. And you received those documents back in 4 September, correct? 5 A Michelle did, yes. 6 Q Okay. And you are aware that there is a 7 dispute over payments from the LLC from Mr. Ted Bernstein 8 to Mr. Eliot Bernstein, correct? You asked about it on 9 cross-examination? 10 A There is a dispute over payments to the LLC. 11 Q Payments from the LLC to either Mr. Eliot 12 Bernstein or his kids or for the support of the house? 13 A You're confusing the LLC with the trust. 14 Q Okay. So the trust should be making payments 15 to the Bernstein Holdings, LLC, is that your 16 understanding? 17 A No. Eliot wants money from Ted individually 18 and Ted as trustee of either Shirley or Simon's trust. 19 And Shirley and Simon's trust don't permit 20 distributions to Eliot. 21 Q You first found out about the issue -- that 22 dispute between Mr. Eliot Bernstein and Mr. Ted Bernstein 23 about the money when you spoke to him in September of 24 2013, didn't you? 25 A No, I learned about it from Alan Rose and Ted</p>	<p style="text-align: right;">160</p> <p>1 MR. FEAMAN: Okay. 2 MR. ROSE: Two questions? 3 THE COURT: Yes, that's it. 4 RE-DIRECT EXAMINATION 5 BY MR. ROSE 6 Q Bernstein Family Realty is not a beneficiary of 7 the estate, the will, the trust, is that correct? 8 A That's correct. 9 Q Absolutely nothing to do with what proceedings 10 are going to be before Judge Colin, as far as you know? 11 A Absolutely correct. 12 MR. ROSE: Thank you, Your Honor. 13 THE COURT: Okay. Have a seat. 14 THE WITNESS: Thank you, Your Honor. 15 THE COURT: Any other witnesses on your end? 16 MR. PANKAUSKI: No, Your Honor. 17 THE COURT: Okay. I have just a question. 18 In the estate case, where you're representing Ted, 19 that's the one where Mr. Feaman you're 20 representing the creditor, correct? 21 MR. FEAMAN: Yes. 22 THE COURT: Eliot is representing himself. 23 Okay. I'll let you do this, Mr. Feaman. What's 24 pending in that case now, anything? Other than 25 the motion to appoint a curator.</p>

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1 MR. FEAMAN: In the estate itself?

2 THE COURT: Yeah.

3 MR. FEAMAN: I am only aware of the motion to

4 appoint Ted Bernstein as the --

5 THE COURT: PR.

6 MR. FEAMAN: -- personal representative.

7 THE COURT: Okay.

8 MR. FEAMAN: But I have not reviewed the

9 file.

10 THE COURT: All right. And so is there an

11 action filed with respect to Simon Bernstein's

12 trust?

13 MR. PANKAUSKI: No -- I'm sorry.

14 MR. FEAMAN: Not yet.

15 THE COURT: All right. Okay. Have a seat.

16 Can I see the motion that --

17 Mr. Pankauski -- that you filed on behalf of

18 Ted to be appointed PR and the motion that asks

19 for -- and I think it was both counsel,

20 including Mr. Glasko -- for a curator instead.

21 MR. PANKAUSKI: Yes, Your Honor.

22 THE COURT: Let me see those physically.

23 MR. PANKAUSKI: This is my motion for

24 appointment. And I can get you the response in

25 opposition.

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1 THE COURT: Okay. I remember seeing the

2 response, but -- okay. So here's -- everyone

3 finished, ready for me to rule? I'm ready to rule

4 on everything.

5 MR. FEAMAN: The only thing I would add, Your

6 Honor, would be the case that we faxed to you

7 earlier today, and to everybody else, Metcalf v.

8 Metcalf, 785 So. 2d. 747, which states, quote, in

9 considering whether the attorney-client privilege

10 applies to disqualify an attorney from opposing a

11 former client, the focus is on the perspective of

12 the person seeking out the lawyer, not on what the

13 lawyer does after the consultation.

14 THE COURT: Okay. I agree that's the law.

15 All right. So -- yes.

16 MR. GLASKO: Judge, are you making a ruling

17 on the appointment of curator today?

18 THE COURT: I am. I'm doing it in like about

19 a minute or two.

20 MR. GLASKO: I would like to ask the court --

21 because we wanted to lodge an ore tenus objection

22 to that. And I think the court needs --

23 THE COURT: Why?

24 MR. GLASKO: -- the court needs to hear some

25 information with regard to Ted's ability to be

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1 appointed as personal representative.

2 THE COURT: Well, hear what I'm going to do,

3 and then you'll see if you want to do that.

4 MR. GLASKO: Yes, sir.

5 THE COURT: Okay. Motion to disqualify is

6 denied.

7 The burden is on Eliot. And I'm treating

8 this as really being Eliot's motion to show

9 that he's an interested person under 731.20.

10 He has not carried that burden. And so that

11 would disqualify him from being someone who has

12 an interest in trying to stop Mr. Pankauski

13 from representing Ted.

14 And, you know, I agree with the law that

15 counsel -- Mr. Feaman just cited. This is

16 really a view of Eliot from a subjective point

17 of view as to -- as a prospective client of

18 Mr. Pankauski, now that Mr. Pankauski is

19 venturing to represent Ted, which is a

20 subsequent representation. Mr. Pankauski is

21 barred from representing Ted if there are

22 interests that -- in the estate -- that

23 materially -- that are materially adverse to

24 those of Eliot, and the rest of the rule. I

25 find that Eliot has not carried his burden of

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1 proof on that, even from a light most favorable

2 to him, which I'm giving him.

3 So motion to disqualify denied.

4 Ted's motion for appointment of himself as

5 curator or administrator ad litem, denied.

6 William Stansbury and -- your client is

7 who?

8 MR. GLASKO: Excuse me, my client is Lisa and

9 Jill.

10 THE COURT: Okay. Are they -- are they a

11 moving party in a formal sense?

12 MR. GLASKO: They are the children of the

13 decedent, Judge.

14 THE COURT: But have they filed -- I don't

15 have all the paperwork, I want to make sure I

16 do -- have they filed requesting a -- that there

17 be a curator other than Ted.

18 MR. GLASKO: No, sir, I've only made an ore

19 tenus motion.

20 THE COURT: The ore tenus motion is denied

21 only -- not on the merit because I'm not doing

22 this -- but I don't have to because William is an

23 interested person, able to, as a secured creditor,

24 who does have an interest under the case law and

25 under the statute in having this estate, which is

<p style="text-align: right;">165</p> <p>1 Simon Bernstein's estate administered, taking 2 himself as a creditor into consideration. 3 That motion is granted. 4 So you are going to have the following 5 choices: Within x days, you'll tell me, in a 6 moment, you're going to tell me how much time 7 you, Pankauski, Feaman, Glasko, need, to tell 8 me who you want as curator. If that person is 9 a lawyer, the fees are capped at \$350 an hour 10 and cannot exceed \$5,000 in any increment 11 without coming before the court and telling me 12 why I should raise that cap incrementally. 13 We're putting a cap on this situation. 14 Okay. So you may need to make sure you 15 can find someone who is willing to serve in 16 that capacity. 17 If you can't agree on someone, Pankauski, 18 you're going to write two names out; Feaman, 19 you're going to write two names out; 20 Mr. Glasko, you'll write two names out on a 21 little piece of paper. We're going to put them 22 in a jar and you three will come in on UMC 23 after -- if you, unfortunately, can't agree 24 upon someone, my judicial assistant will come 25 out, and in your presence, shake the jar and</p>	<p style="text-align: right;">167</p> <p>1 into something that is not or shouldn't be. 2 Okay. So who's going to write up orders? 3 MR. FEAMAN: As to two of the motions, I 4 believe your ruling was that -- just that they 5 were denied, and I have blank orders on that. 6 That would be the order on the verified motion to 7 disqualify counsel. And it says the motion of 8 Eliot Bernstein. 9 THE COURT: Okay. 10 MR. FEAMAN: Because -- 11 THE COURT: But you can do it for reasons I 12 mentioned on the record. So if someone -- 13 MR. FEAMAN: For reasons mentioned on the 14 record. 15 THE COURT: Yeah, that's a good way of doing 16 it. That way you don't have to start recreating 17 it. I gave reasons on there. 18 MR. FEAMAN: And then I have a blank order on 19 a motion for appointment of curator or 20 administrator ad litem, which you denied, by Ted 21 Bernstein. 22 THE COURT: Okay. That's denied. 23 MR. FEAMAN: And then the other order on 24 Mr. Stansbury -- not sure how much detail you want 25 to get in there.</p>
<p style="text-align: right;">166</p> <p>1 pick. So I'll have nothing to do with the 2 actual person because it will be someone that 3 one of the three of you picks. They all -- the 4 only way that that won't work out is if one of 5 the people you pick are obviously not 6 qualified, but I assume that's not going to be 7 the case. 8 So you need to -- if we go that route, on 9 the two names that each side of the three sides 10 are going to pick, make sure that they are 11 willing to serve in advance. 12 Okay. The reason I don't want Ted is 13 because under 733.501 I take a position that 14 given where this case is, and the hype that -- 15 we're achieving a disconnect between what 16 should be involved and what could be a sensible 17 straightforward estate administration on the 18 estate portion of the case -- because that's 19 all that's before me right now. And not get 20 carried on into a whole bunch of other things 21 that aren't yet before me or not yet filed. 22 So we're going to take this in nice small 23 steps. This order applies to the estate case 24 because there is no other case before me. 25 So we're not going to let this blossom</p>	<p style="text-align: right;">168</p> <p>1 THE COURT: Well, you're going to enter that 2 order once you folks talk now. Okay. 3 MR. FEAMAN: Okay. 4 THE COURT: Right now. And Eliot is 5 included in that conversation of whether you can 6 agree upon someone. Because, I mean, I am not 7 suggesting that you, you know, you can't, but you 8 should be able to. I mean, especially -- and you 9 may want to say here's name one, here's name two, 10 here's name three, just to make sure that the 11 people that you now talk about will accept the 12 assignment. Then don't give me the order yet. Go 13 actually speak to these people, make sure they 14 accept, and then under the conditions that I'm 15 mentioning. And then we're going to go from 16 there. And then you put the name in the order. 17 Okay? 18 MR. PANKAUSKI: Yes, Your Honor. 19 THE COURT: Understand? 20 MR. PANKAUSKI: Understood. 21 THE COURT: All right. Understand, Eliot? 22 MR. ELIOT BERNSTEIN: Yes, sir. 23 THE COURT: Okay. Great. So speak now. I'm 24 going to stay, but I'm going to ask you to 25 start -- go outside because we need to kind of</p>

1 close the court -- but I'm going to stay here and
2 let the lawyers and Eliot come back in to tell me
3 what you've agreed to.

4 Okay. Thanks.

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6 (Thereupon, the proceedings
7 were concluded at 5:03 p.m.)
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1
2 CERTIFICATE
3

4 THE STATE OF FLORIDA
5 COUNTY OF PALM BEACH.

6
7 I, DAVID L. MARSAA, Professional Reporter,
8 State of Florida at large, certify that I was
9 authorized to and did stenographically report the
10 foregoing proceedings and that the transcript is a
11 true and complete record of my stenographic notes.

12 Dated this 5th day of July, 2014.
13
14

15 _____
16 DAVID L. MARSAA, COURT REPORTER
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<p style="text-align: center;"><u> </u> \$</p> <p>\$15,000 138:14 145:18</p> <p>\$200,000 98:2 99:19 138:10,11 145:17,20</p> <p>\$350 165:9</p> <p>\$5,000 165:10</p> <p style="text-align: center;"><u> </u> 0</p> <p>09/13 107:8</p> <p style="text-align: center;"><u> </u> 1</p> <p>1 50:15 105:10 106:18 109:6,7 112:1,10 116:1 132:9 136:16,25</p> <p>1.18 73:8</p> <p>1.9 73:8</p> <p>108 50:15,16</p> <p>10th 82:21 91:25 92:21 95:5 98:15,18 99:17 105:7 108:23 142:7,12,25 143:11,15</p> <p>113 50:17</p> <p>118 50:18</p> <p>11th 146:16 147:7</p> <p>12 89:24 146:20 148:7,10</p> <p>120 49:9</p> <p>125 50:19</p> <p>1267 58:19</p> <p>129 50:5</p> <p>12th 92:1,21 105:15</p> <p>131 50:8</p> <p>141 50:20</p> <p>142 50:19,20</p> <p>152 50:9</p> <p>159 50:8</p> <p>17345 49:20</p> <p>19 48:24 105:25 108:17 109:1,5 137:2</p> <p>1-9 73:8</p> <p>1985 65:15</p> <p>1988 59:12</p> <p>19th 51:6</p>	<p>105:17,23 137:9</p> <p style="text-align: center;"><u> </u> 2</p> <p>2 50:16 51:4 58:19,20 107:8 109:10,13 115:20,25 119:20,22 136:16 137:2 139:21 143:13 155:17 156:1</p> <p>2:30 48:25 51:6</p> <p>20 93:25 105:22 109:11 137:3</p> <p>200 51:4</p> <p>2003 136:9</p> <p>2008 106:25 107:1,5,6,9 155:24 156:7</p> <p>2009 59:12</p> <p>2012 61:8 93:25 101:5 107:6,7 118:22 156:3,6,17,22</p> <p>2012CP004391 51:11</p> <p>2013 65:12 103:19 104:2,12 105:22,25 107:8 109:2,11 110:13 111:4 114:11 118:23,24 119:8 130:20 136:15 137:2,3 139:19 146:6 158:24</p> <p>2014 48:24 51:7 108:23 142:7,12 143:1 146:20 148:10 170:12</p> <p>20th 81:12 105:16 137:4,10 139:20 140:2,5</p> <p>21st 140:2</p> <p>22nd 140:3</p> <p>23 136:9</p> <p>23rd 139:21 140:3</p> <p>24 110:13 111:4 114:6,11 136:15 139:19 145:11 146:6</p> <p>24th 139:25 140:4</p> <p>26 119:5</p> <p>2753 49:2 78:13</p> <p>2d 58:19 162:8</p>	<p style="text-align: center;"><u> </u> 3</p> <p>3 50:17 114:15,18 132:9 136:7 137:22 155:8</p> <p>3:07 147:14 148:7</p> <p>30 138:24 144:23</p> <p>33157 49:20</p> <p>33401 49:7,10</p> <p>33434 49:3</p> <p>33436 49:15</p> <p>34th 49:2 78:13</p> <p>3615 49:15</p> <p style="text-align: center;"><u> </u> 4</p> <p>4 50:18 66:7 105:11 106:18 114:24 115:2 116:12 119:10,11 121:2 131:19</p> <p>4-1.18 52:3 53:20 59:13,15 60:10,14,20 66:5,8 67:12 73:22 77:9,25 141:24</p> <p>4-1.7 58:24 65:4</p> <p>4-1.8 56:20 64:17 65:16 66:2</p> <p>4-1.9 56:21 58:21 59:14 60:11,14,18,19 64:12,17 67:23 69:22</p> <p>4-5.3 154:15</p> <p>48 141:9</p> <p style="text-align: center;"><u> </u> 5</p> <p>5 50:19 126:5,8 130:10</p> <p>5:03 48:25 169:7</p> <p>5:06 143:15</p> <p>5:23 147:7</p> <p>5:52 142:8 143:11</p> <p>502012CP004391XXX XSB 48:2</p> <p>505 49:6</p> <p>529 58:19</p> <p>5th 170:12</p> <p style="text-align: center;"><u> </u> 6</p>	<p>6 50:20 89:24 142:15,18,20 143:6,7,10 146:17</p> <p>600 49:6</p> <p style="text-align: center;"><u> </u> 7</p> <p>7 146:22 147:4 148:8 149:13</p> <p>7:10 137:5</p> <p>701 49:9</p> <p>731 152:10</p> <p>731.20 163:9</p> <p>733.501 166:13</p> <p>747 162:8</p> <p>74-page 115:8</p> <p>77 50:5</p> <p>785 162:8</p> <p style="text-align: center;"><u> </u> 8</p> <p>8 150:4</p> <p>86 50:6</p> <p style="text-align: center;"><u> </u> A</p> <p>ABA 53:23</p> <p>ability 162:25</p> <p>able 51:19 150:22 164:23 168:8</p> <p>above-styled 51:2</p> <p>absolute 54:15</p> <p>absolutely 146:3 153:4,14 154:22 159:20 160:9,11</p> <p>accept 168:11,14</p> <p>accepted 111:23</p> <p>accountings 91:3</p> <p>accurate 54:22, 121:13 157:3</p> <p>achieving 166:15</p> <p>acting 101:18</p> <p>action 56:9 57:6 61:1 101:12,21 110:19 137:22 145:12 153:9,13 159:18 161:11</p> <p>actions 79:15,17 84:5</p> <p>active 154:18</p> <p>acts 102:3</p> <p>actual 77:16</p>
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN
_____ /

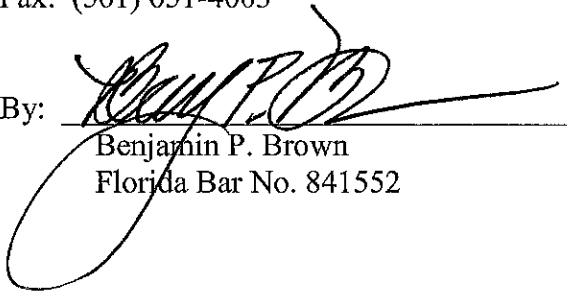
NOTICE OF FILING

Curator, Benjamin P. Brown, hereby gives notice of filing the complete transcript of the hearing¹ on June 12, 2014, attached hereto as Exhibit A.

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served by e-mail upon the parties on the attached service list this 23 day of June, 2014.

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By: _____


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¹ Transcript also includes the hearing on a motion in *In re: Estate of Shirley Bernstein*, Palm Beach County Case No. 502011CP000653XXXXSB.

EMAIL SERVICE LIST

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY , FLORIDA

CASE NO.: 502012CP004391XXXXSB

IN RE:
ESTATE OF SIMON L. BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN, PRO SE
Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

TRANSCRIPT OF PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: June 12, 2014
TIME: 9:50 a.m. - 10:35 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
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5 By: PETER M. FEAMAN, ESQ.

6 APPEARING ON BEHALF OF TED BERNSTEIN:

7 PAGE, MRACHEK, FITZGERALD ROSE
8 KONOPKA & DOW, P.A.
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10 WEST PALM BEACH, FL 33401
11 By: ALAN B. ROSE, ESQ.

12 MATWICZYK & BROWN
13 625 N. FLALGER DRIVE, SUITE 401
14 WEST PALM BEACH, FL 33401
15 By: BENJAMIN P. BROWN, ESQ. (CURATOR)

16 JOHN P. MORRISSEY, ESQ.
17 330 CLEMATIS STREET, SUITE 213
18 WEST PALM BEACH, FL 33401

19 ELIOT I. BERNSTEIN, Pro se

20

21

22 BE IT REMEMBERED, that the following

23 proceedings were taken in the above-styled cause before
24 the Honorable MARTIN COLIN, at the Palm Beach County
25 Courthouse, 200 West Atlantic Avenue, Room 8, in the City
of Delray Beach, County of Palm Beach, State of Florida,
on June 12, 2014, to wit:

26

27

28

1 P-R-O-C-E-E-D-I-N-G-S

2 * * * *

3 MR. ROSE: Good morning, Your Honor. There
4 is a number of matters in the Simon Bernstein, but
5 there is only one in the Shirley Bernstein, can we
6 do that first?

7 THE COURT: Okay.

8 MR. ROSE: We have a motion to compel. May I
9 approach?

10 THE COURT: Yeah. Sure.

11 MR. ROSE: This is just a very simple motion
12 to compel. Prior to my involvement, predecessor
13 counsel served a request to produce on Elliot
14 Bernstein, December 19th. Mr. Bernstein has not
15 responded and has indicated he doesn't believe
16 that he -- he's indicated to me he doesn't believe
17 he should have to provide us with any discovery.

18 THE COURT: All right. Let me take a look.

19 Where's Elliot?

20 MR. ELLIOT BERNSTEIN: Hi.

21 THE COURT: So you got a request to produce
22 in Shirley's estate, correct?

23 MR. ELLIOT BERNSTEIN: Correct.

24 THE COURT: And haven't responded or done
25 anything?

1 MR. ELLIOT BERNSTEIN: Well, I think you are
2 aware of the last counsel fled town under -- with
3 the other counsel. And we've put in motions that
4 Ted should not be the PR, even though you ordered
5 that, it was -- he's got too many conflicts now
6 with the fraudulent documents, changing
7 beneficiaries, all that.

8 THE COURT: But you still have to do a
9 written response on discovery.

10 MR. ELLIOT BERNSTEIN: Oh, I didn't know
11 because Manseri left. That was filed by Manseri
12 and to send things to Manseri would have been kind
13 of crazy because he was resigning because all of
14 that crazy.

15 THE COURT: Okay. All right. So what's the
16 relief you're requesting on this motion?

17 MR. ROSE: Compel him to --

18 THE COURT: File a response?

19 MR. ROSE: Produce the documents.

20 THE COURT: You don't produce -- I don't ever
21 do -- the key is not the production, that's part
22 two. Part one is the response. You need a
23 response so that you know what you're going to get
24 in production.

25 MR. ROSE: If you're going to rule that he

1 hasn't waived his objection by not filing the
2 response, I would be fine giving him ten days to
3 file a written response.

4 THE COURT: How much time -- you have to file
5 a written response to the request.

6 MR. ELLIOT BERNSTEIN: Okay.

7 THE COURT: How much time do you need?

8 MR. ELLIOT BERNSTEIN: Well, 30 days.

9 THE COURT: Why not? It's going to be
10 response -- and then when you file your response,
11 it has to be a line item response. And then you
12 have to produce that which you say is in your
13 documents in your possession and control.

14 MR. ELLIOT BERNSTEIN: Unless I don't want to
15 produce them to them.

16 THE COURT: No. No, there is no such thing
17 you don't want to.

18 MR. ELLIOT BERNSTEIN: Here's the problem. I
19 feel that right now, for example, here in this
20 court, we're allowing people to act in fiduciary
21 capacities that they don't have. You're about to
22 see that their legal strategy is to harass me.
23 And that's the document that they're trying to
24 keep privileged --

25 THE COURT: Hold on one second.

1 MR. ELLIOT BERNSTEIN: And they are asking
2 for very sensitive information that's involved in
3 RICO cases both in Nevada and the U.S. District
4 Court in New York.

5 THE COURT: Tell you what I'm going to do.
6 Listen carefully. Here's how I'm handling this.
7 I don't want you to give me speaking objections to
8 discovery. Okay. I'm going to change my order a
9 little bit around. I'm moving the time frame up.
10 You have 20 days from today to file a response.
11 The response has to be line item. Pay attention
12 to that. The rule requires that. Understand that
13 part so far?

14 MR. ELLIOT BERNSTEIN: Address each thing in
15 their thing?

16 THE COURT: Yeah, line item.

17 MR. ELLIOT BERNSTEIN: Got it.

18 THE COURT: Even though your time has passed,
19 I'm going to allow you still to be able to make it
20 a legal objection. But understand, this is not a
21 speaking objection. These aren't stories. These
22 aren't long -- objections are, for example,
23 someone would write -- doesn't apply to you --
24 attorney-client privilege. Work product. Okay.
25 A legally recognized objection. Because otherwise

1 discovery takes place under Florida law.

2 MR. ELLIOT BERNSTEIN: Okay.

3 THE COURT: Okay. Write the order up on
4 that.

5 MR. ELLIOT BERNSTEIN: Your Honor, I think,
6 though --

7 THE COURT: So if you have a legally
8 recognizable objection, you have to put that in
9 writing. And then he knows what that is. I know
10 what it is. We're not guessing. So I'm giving
11 you a right to assert an objection, even though
12 it's late, you just have to do it in writing.

13 MR. ELLIOT BERNSTEIN: I get that. And
14 appreciate that. My biggest concern is that I've
15 put in motion after motion to get rid of the PR
16 for all kinds of violations of fiduciaries, et
17 cetera. I don't mind giving discovery to a guy
18 like Ben Brown, who's honorable in doing things
19 that I can't find anything wrong with. But when I
20 find a litany of things that I've submitted to
21 Your Honor that, you know, when we've got a
22 hearing coming up to get rid of Ted in all these
23 crazy capacities that he's assuming, and some of
24 them are literally crazy, trustees have lost
25 trusts, starting federal insurance cases, et

1 cetera. So, you know, I don't want to be giving
2 this guy who's got a plan to attack my children's
3 school records in this and all kinds of --

4 THE COURT: I don't know what discovery is,
5 but Florida works it this way. You got discovery
6 requests. If you have a legal objection, make it.

7 MR. ELLIOT BERNSTEIN: But doesn't it have to
8 be that you're giving discovery to somebody who's
9 qualified to be --

10 THE COURT: No. Right now, as long as they
11 are a party -- this is -- Ted is currently right
12 now successor PR of Shirley's estate?

13 MR. ROSE: Yes, sir.

14 MR. ELLIOT BERNSTEIN: Well, he's given no
15 notice to anybody, no accountings were turned over
16 by the last PR.

17 THE COURT: Doesn't mean discovery can't --
18 you know, I'll deal with that which is before me.
19 Okay.

20 MR. ELLIOT BERNSTEIN: Well, I put my stuff
21 before you a long time ago and --

22 THE COURT: There is nothing that I have that
23 I don't hear. I mean, I hear stuff you bring to
24 me.

25 MR. ELLIOT BERNSTEIN: I've got a ton of

1 motions that haven't been heard since May.

2 THE COURT: Have you done a notice of
3 hearing?

4 MR. ELLIOT BERNSTEIN: I have. I'm trying to
5 do one, but this guy won't schedule anything
6 unless I depose and all kinds of crazy conditions.
7 He's running around wasting everybody's time,
8 money, et cetera.

9 THE COURT: Well, try to coordinate hearings.

10 MR. ELLIOT BERNSTEIN: I've been trying for
11 days.

12 THE COURT: Sit in the back and try to
13 coordinate dates -- does he have matters pending
14 that he's trying to get you to have hearings for?

15 MR. ROSE: I think there is some hearings
16 coming up in July. All I said, we'd like to get
17 the discovery and his deposition before we have
18 the motion on the hearing he has pending.

19 THE COURT: If the motion --

20 MR. ELLIOT BERNSTEIN: Conditions.

21 THE COURT: Okay. Just trying to figure out
22 what happened to my trial. Okay. So -- all
23 right. You know, everyone has a duty to
24 coordinate hearings. Okay. So let's make sure we
25 do that. I'll have -- you write up the order I

1 just mentioned on this one.

2 MR. ROSE: I have a --

3 THE COURT: Did you write it up?

4 MR. ROSE: I wrote up an order --

5 THE COURT: Write what I said about
6 objections, write that out, spell that out. Legal
7 objections only.

8 MR. ROSE: I'll type an order and submit it
9 after sending it to Mr. Bernstein or do you want
10 me to do it right now?

11 THE COURT: Do it right now. Do it before
12 you leave today. Now I have time.

13 MR. ELLIOT BERNSTEIN: Are you Ted's counsel
14 as the PR of the estate? Am I correct on that,
15 Alan? Are you, Alan? See, here we go. Are you
16 Ted's counsel? He's filed no notices of
17 appearance.

18 THE COURT: He filed a pleading here. I have
19 it.

20 MR. ELLIOT BERNSTEIN: But not the original
21 pleading. I'm sure the law says something about
22 that.

23 THE COURT: Now everything is e-filed, so I
24 don't know what's original and what's not.

25 MR. ELLIOT BERNSTEIN: Well, he's a

1 replacement counsel.

2 THE COURT: Okay. Good.

3 MR. ELLIOT BERNSTEIN: Without an original
4 pleading -- he's filed no notice of appearance in
5 any matter.

6 THE COURT: A pleading like this -- he says
7 Ted Bernstein, I'm his lawyer. That's what he
8 said. Okay.

9 MR. ELLIOT BERNSTEIN: He hasn't addressed
10 that. He didn't say he's Ted Bernstein's counsel
11 as PR yet. I just asked him that.

12 THE COURT: Are you Ted Bernstein's lawyer?

13 MR. ROSE: Yes, sir.

14 MR. ELLIOT BERNSTEIN: As PR to the Shirley
15 estate?

16 THE COURT: Yeah.

17 MR. ELLIOT BERNSTEIN: Wait. Wait. Don't
18 answer that for him.

19 THE COURT: Estate of Shirley Bernstein,
20 correct?

21 MR. ROSE: Yes, sir.

22 MR. ELLIOT BERNSTEIN: Okay.

23 THE COURT: Okay. All right. What's next?
24 Now, we're going to the other estate.

25 MR. BROWN: Simon. I have a second petition

1 for payment of curator's fees, and this would be
2 for April.

3 I don't know if there is any objection.

4 THE COURT: Any objection?

5 MR. BROWN: The order is substantially
6 similar to the first one, just changes the
7 numbers.

8 THE COURT: Okay.

9 MR. ROSE: May I be heard on his petition?

10 THE COURT: Yeah.

11 MR. ROSE: We have no objection to his fees,
12 but I do think it's important to point out to the
13 court -- and it's going to be related to the next
14 motion that we have. Ms. Eliot Bernstein sent the
15 e-mails to Ben Brown and when we end up with, you
16 know, a petition for instructions, we had two of
17 them on May 23rd, and you instructed everyone that
18 he should not be Elliot's lawyer. And Eliot
19 responded he doesn't have to just, you know, jump
20 through hoops. Ben is concerned that he, you
21 know, fulfill his duties and not run afoul of
22 Eliot, but we've got two or three more petitions.
23 And the fees, I think, so far, approaching \$50,000
24 for the curator.

25 THE COURT: Well, the way it works is pretty

1 simple. I mean, you know, if Mr. Brown is getting
2 bombarded by a party, and, you know, I mean, he's
3 concerned that it may not be necessary and
4 reasonable, then he, you know, he deals with that
5 and causes himself not to have wasted time, but he
6 knows how to handle that.

7 MR. ROSE: We have no objection to Mr. Brown.
8 It's not his -- the issue is not really with him,
9 but I think the curator needs some protection from
10 constantly being bombarded --

11 THE COURT: He can protect himself.

12 MR. ELLIOT BERNSTEIN: Are you his attorney
13 too?

14 THE COURT: Eliot, no, no. Don't do that.

15 MR. BROWN: Actually, Judge, this kind of
16 dovetails into what happened on February 23rd. I
17 did have the two motions for instruction, one of
18 them was when Eliot asked me --

19 MR. FEAMAN: May 23rd.

20 MR. BROWN: May 23rd. Asked me to look into
21 44 different subcategories of documents and kind
22 of take the lead on objecting to the Tescher
23 Spallina accounting. The other one is with regard
24 to the will, the 2012 will. And I have the pages
25 of the transcript of what Your Honor said. And,

1 essentially, I said it's not the curator's role to
2 take the lead on objecting to the accounting.

3 It's not the curator's role to --

4 THE COURT: Hold on one second.

5 MR. BROWN: It's not the curator's role to
6 challenge or even investigate the circumstances of
7 the 2012 will. Your Honor --

8 THE COURT: You know, but here's the thing,
9 if I said that and you then are being asked to do
10 something that you don't think is within the scope
11 of the curatorship, then you make a decision based
12 upon that.

13 MR. BROWN: Well, Your Honor, sometimes it's
14 not necessarily all that clear.

15 THE COURT: That's why you use discretion and
16 you decide what to get involved with and whatnot,
17 and, then depending on that, I may hear from
18 someone else who likes that idea or not.

19 MR. BROWN: What Your Honor said -- actually
20 what Your Honor said on the 23rd was that you
21 said, stop, you don't have to go further. That's
22 the position. That's law. You don't do that. If
23 there is an accounting, there is a rule on
24 objections. The parties object, they don't use
25 you. You don't work for them, which is true, I'm

1 no one's here attorney.

2 THE COURT: Right.

3 MR. BROWN: You work for the court, that's
4 what you said. You said, you are not an advocate.
5 You only investigate things that the parties may
6 be interested in. They can do that -- do what
7 they think they need to do based on the rules of
8 procedure and the statutes.

9 THE COURT: All right. So if someone asked
10 to do something you think is outside the scope of
11 what I ordered, what I mentioned in the hearings,
12 then don't do it.

13 MR. BROWN: Your Honor, you also didn't enter
14 an order on those motions on May 23rd.

15 THE COURT: Well, someone has to submit them
16 to me.

17 MR. BROWN: I did, Your Honor. I
18 submitted -- I submitted them to all the parties.
19 Mr. Rose had some changes.

20 THE COURT: Okay.

21 MR. BROWN: I then -- you then went on
22 vacation and then, unfortunately, got ill. I sent
23 you a letter that said here are the competing
24 orders, and here's what you said.

25 THE COURT: I didn't see the competing

1 orders.

2 MR. BROWN: That's the order. Now, Mr. Eliot
3 Bernstein, he had an objection because he said
4 that all of the minor beneficiaries didn't
5 necessarily receive notice of the May 23rd
6 hearing. But, in fact, based on the e-mail
7 report, I believe that everyone has received -- I
8 mean, here's how long the e-mail service list is.
9 Everybody received notice of everything.

10 THE COURT: What's the -- what's the dispute
11 now with the form of these orders?

12 MR. BROWN: Well, the dispute was -- Mr. Rose
13 had some changes to what I submitted.

14 THE COURT: So you folks did -- did you agree
15 upon the final form?

16 MR. BROWN: He's got handwritten -- we didn't
17 agree on a final form because I think, and I don't
18 want to put words in Elliot's mouth, Eliot said I
19 don't agree to either orders because there are
20 minor beneficiaries of the trust, the pour-over
21 trust, who weren't here on the 23rd, or didn't get
22 notice. And this is the notice -- service list.
23 I mean, this is everybody.

24 THE COURT: Let's put the notice aside. Is
25 there any other -- have you guys agreed upon the

1 form of the order now, or you didn't notice this?

2 MR. ROSE: I think that my comments are
3 minor. I think Mr. Brown approved them. So I
4 have no objection to the order.

5 THE COURT: In this packet, give me a clean
6 order, Mr. Brown.

7 MR. BROWN: All right. I didn't have a
8 problem with -- it's not necessarily a clean
9 order, Your Honor, itself an order.

10 THE COURT: One that I can sign, I mean.
11 This has Mr. Rose's changes that he has written
12 in.

13 MR. ELLIOT BERNSTEIN: Can I -- do we all
14 have copies of Roses' things?

15 THE COURT: Let me see what --

16 MR. BROWN: Mr. Rose e-mailed them to
17 everybody. But they are attached to that May 30th
18 letter.

19 THE COURT: I'll give you a copy of it. Any
20 reason not to sign this based upon that hearing
21 that I had.

22 MR. ELLIOT BERNSTEIN: Are you saying he's
23 not authorized, as the estate, if he finds missing
24 items, or whatever, to challenge the accounting as
25 the --

1 THE COURT: He's not -- he's not filing
2 objections to the accounting, the parties are.
3 You're not, correct?

4 MR. ELLIOT BERNSTEIN: But he's the estate,
5 isn't he? Isn't he a party known as the estate?

6 THE COURT: Yeah, but he's a curator, that's
7 different.

8 MR. BROWN: I'm essentially a caretaker
9 until --

10 MR. ELLIOT BERNSTEIN: Well, wouldn't the
11 PR --

12 THE COURT: Let me ask you this --

13 MR. ELLIOT BERNSTEIN: If you got -- if
14 you're the PR and you got an accounting that's
15 fraudulent in front of you, don't you have a duty
16 to challenge that and --

17 THE COURT: Maybe so, but that's up to
18 everybody --

19 MR. ELLIOT BERNSTEIN: But you're saying he's
20 not authorized.

21 THE COURT: He's not.

22 MR. ELLIOT BERNSTEIN: You're precluding him.

23 THE COURT: He is not.

24 MR. ELLIOT BERNSTEIN: Well, he's the PR
25 tech --

1 MR. BROWN: No, I'm not the personal
2 representative, and I have declined to serve.

3 THE COURT: He's the curator, it's a
4 different role.

5 MR. BROWN: In fact, Your Honor, I was
6 supposed to be the curator for just a couple of
7 months.

8 THE COURT: Right.

9 MR. BROWN: We don't even have a hearing set.

10 THE COURT: Yeah, the parties have to do the
11 objections to the accounting.

12 MR. ELLIOT BERNSTEIN: Okay.

13 MR. BROWN: Your Honor, it's not anything
14 that's teed up today, is that we don't have a
15 hearing set --

16 THE COURT: What do you mean, a hearing on --

17 MR. BROWN: -- to get a personal
18 representative.

19 THE COURT: You know, I can't deal with
20 getting hearing dates. Is there a problem with
21 getting hearing dates?

22 MR. BROWN: There's not a problem with
23 getting hearing dates. It's a problem with
24 getting anybody to move to appoint -- thank you --
25 to appoint a personal representative. And --

1 THE COURT: Well, I thought the hearing was
2 on the objections on the accounting.

3 MR. BROWN: This is the other one, Your
4 Honor.

5 THE COURT: Oh.

6 MR. BROWN: There is a motion objecting to
7 the accountings, but there is no hearing set to
8 appoint a personal representative. And I'm -- you
9 know, frankly, I'm the curator. I'm --

10 THE COURT: Well, at some point if no one
11 wants to be PR, you know, I'll discharge you and
12 the estate will be closed. Just close the estate.

13 MR. BROWN: I think that's the case right
14 now, nobody wants to be a PR.

15 MR. ELLIOT BERNSTEIN: Well, that's not true.

16 THE COURT: Well, someone has to file a
17 petition, though.

18 MR. ELLIOT BERNSTEIN: Well, I'm -- I got a
19 ton of petitions in that I'm trying to get
20 hearings. Like I said, they are blocking and
21 trying to get this case closed.

22 I mean, he just said are you having
23 problems scheduling hearings. I want hearings
24 since, you know, May.

25 THE COURT: Hold on. Let me take a look at

1 this one.

2 Okay. All right. So I'm going to order
3 everyone cooperate in coordinating hearings.
4 That's a silly thing to have difficulty with.

5 MR. ELLIOT BERNSTEIN: Am I forced to take a
6 deposition before I schedule a hearing with you on
7 an unrelated --

8 THE COURT: You can schedule a hearing. Then
9 you get a hearing date from me.

10 MR. ELLIOT BERNSTEIN: He won't schedule a
11 hearing until I take a deposition.

12 THE COURT: Okay. Here's the way it works.
13 Scheduling is one thing.

14 MR. ELLIOT BERNSTEIN: Right.

15 THE COURT: Discovery is another thing.

16 MR. ELLIOT BERNSTEIN: That's right.

17 THE COURT: You try to do your discovery
18 based upon hearing dates coming up. So if you get
19 a hearing date within 30 days, then that tells you
20 you have to have discovery sooner. If you have a
21 hearing in six months, unlikely in my division,
22 then, you know, you could spread out your
23 discovery requests, but they're separate and
24 apart.

25 MR. ELLIOT BERNSTEIN: No, but I'm trying to

1 schedule a hearing and he's refusing unless I
2 take --

3 THE COURT: You get a hearing. And then
4 depending upon what the nature is that's going to
5 be heard, if discovery is necessary, you do
6 discovery. They're two independent items.

7 MR. ELLIOT BERNSTEIN: But your secretary or
8 your clerk has told us that we have to coordinate
9 our hearings with these guys, doesn't seem they
10 have to do that with us, since none of this is
11 scheduled with our knowledge. But nonetheless, if
12 I want to schedule a hearing, I got to get
13 approval from nine guys, three of them won't
14 respond at all. Alan Rose says you better take a
15 deposition or I'm not scheduling hearings. And,
16 you know, they are trying to delay it so they can
17 get in all these hearings while a bunch of
18 criminals sit around --

19 THE COURT: All right. I'll have my
20 assistant come out and see you folks when you're
21 done here, before you all leave, and she'll
22 coordinate hearings with you.

23 MR. ELLIOT BERNSTEIN: Well, I can't do that.
24 I got to --

25 THE COURT: Why?

1 MR. ELLIOT BERNSTEIN: -- go back and check
2 my schedules. Can I call in?

3 THE COURT: You want quick service and I'm
4 going to give you --

5 MR. ELLIOT BERNSTEIN: I appreciate that. I
6 greatly appreciate that.

7 THE COURT: So there's a rule there that says
8 if you ask for something and I give it to you,
9 like that --

10 MR. ELLIOT BERNSTEIN: I didn't bring a cell
11 phone, I don't have my schedule, I got doctors --
12 that's the biggest concern -- and if I'm free on
13 those days they want to schedule them, great. I
14 already gave them a date, you know, July 14th.

15 THE COURT: Try to work it out, we'll get
16 there.

17 MR. ELLIOT BERNSTEIN: Your secretary has
18 been holding it.

19 MR. BROWN: Judge, the problem with
20 appointing a personal representative is not that
21 nobody is -- there is no hearing date -- because
22 nobody has actually filed a motion to appoint a
23 personal representative.

24 THE COURT: But Eliot says he has.

25 MR. ROSE: There's two motions pending.

1 There's a petition by Ted to be the personal
2 representative. I think Eliot may have filed a
3 petition to be the personal representative. We
4 need to set those for a contested hearing.

5 THE COURT: So, Mr. Brown, there are two.

6 MR. ELLIOT BERNSTEIN: He denied Ted's
7 motion.

8 MR. ROSE: I'll set them.

9 MR. ELLIOT BERNSTEIN: Ted already filed a
10 motion to be PR and you denied it.

11 THE COURT: Go ahead.

12 MR. ROSE: We had a motion pending, Your
13 Honor, and you appointed a curator.

14 THE COURT: Right.

15 MR. ROSE: In the meantime, to avoid what's
16 going to be a very expensive and costly battle,
17 I've been having discussions with Mr. Brown as
18 curator, a number of discussions of a way to try
19 to streamline -- Mr. Brown can confirm that's the
20 goal.

21 THE COURT: Sure.

22 MR. ROSE: Just had those discussions. I've
23 tried to have discussions with some of the other
24 beneficiaries to see if we can at least get a
25 consensus. I thought that was a worthwhile

1 exercise before we have what's going to be a half
2 day or day contested trial on who should be the
3 PR. One of the motions dovetails into that -- I
4 have two motions pending today. One is a motion
5 to compel Eliot to appear for deposition and
6 comply with the privilege rule. We had a hearing
7 you may recall on May 23rd with inadvertent
8 privilege. I have that motion. I also have a
9 motion that relates to Mr. Brown, if you want to
10 do that motion first, in case Mr. Brown wanted to
11 leave. We filed a petition -- a motion for --

12 MR. ELLIOT BERNSTEIN: I'd like to do the
13 privilege because if we get through this, we'll
14 find out that he might not even be here in a
15 minute.

16 MR. BROWN: I'd actually prefer to do --

17 MR. ROSE: Do whatever Mr. Brown likes.

18 MR. BROWN: I don't know that I like it, but
19 I don't have any opposition to it.

20 MR. ROSE: It's the one about the mortgage.

21 MR. BROWN: Okay.

22 THE COURT: Let me see.

23 MR. ROSE: This is a motion -- this is kind
24 of in line with Your Honor's instructions. Ted
25 Bernstein, as successor trustee of the Simon

1 Bernstein trust, has asked the curator to take
2 action with regard to an asset of the estate.
3 Mr. Brown has indicated, consistent with your
4 ruling, that's not his job. So we have filed a
5 motion seeking instructions. And we are before
6 you addressing one -- there is only a real handful
7 of assets in the estate. One of the assets in the
8 estate of Simon Bernstein is a second mortgage
9 that the estate holds on a piece of property. The
10 property is owned by an entity called Bernstein
11 Family Realty, LLC. That's an entity that was
12 created by Simon while he was alive. And while he
13 was alive, Simon was the manager of that entity.
14 This Bernstein Family Realty, which owns this
15 house, there is also a first mortgage on the house
16 held by the seller back when the house was sold in
17 2008. So there is a first mortgage of \$110,000.

18 THE COURT: Purchase money mortgage?

19 MR. ROSE: Purchase money mortgage. That
20 mortgage matured, technically, a few years ago and
21 they did an amendment, and they extended the term
22 for three years. The lease matures on June 19th,
23 which is in about seven days. Next week. The
24 first mortgage, not the lease, the first mortgage
25 matures. They are owed \$110,000, plus interest.

1 The mortgage is held by a gentleman named Walter
2 Somm. There is unpaid taxes for 2013. We're told
3 that the house is not insured. Okay. That's the
4 starting point. What the estate has, which
5 Mr. Brown is in possession of, is the estate has a
6 second mortgage on that property. There's a
7 second mortgage holder on property when there is a
8 first, unpaid taxes, no insurance, you would want
9 to take action to try to protect whatever equity
10 is in the property. The current occupant of the
11 house -- and just so I can assure you -- we're
12 going to hear it in a minute -- this is no way to
13 try to harm Eliot. This is trying to protect the
14 assets that are in the estate, and try to protect
15 the value of it. But the tenant of the property
16 is Eliot Bernstein and his family. They live in
17 there rent free. They don't pay taxes. I don't
18 have all the information other than that.

19 And just if you indulge me for a little
20 background. I think Simon bought the house for
21 Eliot. He put the ownership, though, in an
22 entity called Bernstein Family Realty. It's
23 encumbered by two mortgages. And the mortgages
24 exceed the value of the property. I don't know
25 what it's exactly worth. I attached a Zillow,

1 which is not an appraisal.

2 THE COURT: What's the issue, though?

3 MR. ROSE: The issue is, someone's got to
4 administer the second mortgage. It's in default
5 and no one has been administering it. And --

6 THE COURT: You say administering it, seek
7 collection of its payment.

8 MR. ROSE: Potentially. Or do something to
9 protect the asset. And in addition, we've asked
10 permission to have the estate potentially pay the
11 first -- buy the first mortgage. Because if we
12 don't take care of the first mortgage on June 19,
13 what's going to happen is that Mr. Somm is going
14 to hire legal counsel.

15 THE COURT: When you say Simon held a note
16 and mortgage, second mortgage?

17 MR. ROSE: Right.

18 THE COURT: Who was -- who's the mortgagor?

19 MR. ROSE: Bernstein Family Realty.

20 THE COURT: I thought they owned the
21 property.

22 MR. ROSE: They own the property. They are
23 the title owner. They are the mortgage -- they
24 are the mortgagee of the property.

25 THE COURT: Okay. But who's the mortgagor?

1 MR. ROSE: Of the second mortgage, Simon
2 Bernstein, while he was alive. So now it's the
3 estate of Simon Bernstein.

4 THE COURT: So he owed the money. He's the
5 debtor on the debtor/creditor part of the
6 mortgage, Simon was the debtor?

7 MR. ROSE: No, Simon was the creditor.

8 THE COURT: Who's the debtor?

9 MR. ROSE: Bernstein Family Realty, an entity
10 that owns the house.

11 THE COURT: Okay. I'm not -- I thought --
12 they own the house and Bernstein Family Realty
13 borrowed \$360,000, or whatever, the amount of the
14 second mortgage is?

15 MR. ROSE: Correct. Bernstein Family Realty
16 potentially owns \$110,000, plus interest, to
17 Walter Somm. He's the first mortgage holder. And
18 Bernstein Family Realty also owes 365,000, plus
19 interest, to the estate of Simon Bernstein.

20 THE COURT: Which -- that transaction, how
21 did that second mortgage come about?

22 MR. ROSE: Simon put -- I think Simon put up
23 all the money for the house and the renovations.
24 And so in order to --

25 THE COURT: So he had the owner give him a

1 second mortgage back.

2 MR. ROSE: Correct. He was the manager of
3 the ownership entity. Simon structured this
4 through Bernstein Family Realty. Bernstein Family
5 Realty, after Simon passed away, the new manager
6 of Bernstein Family Realty is Oppenheimer. And I
7 believe the equity -- the owners of the equity of
8 Bernstein Family Realty are three trusts created
9 for Elliot's three children. No one is disputing
10 that. But the house is clearly upside down,
11 unless it's worth more than \$500,000, which it
12 doesn't appear to be worth more than \$500,000. If
13 it is, that's great because that's better for the
14 estate. The concern here for Ted as the fiduciary
15 for the trust is that we have an asset. It's the
16 mortgage. It's not fully secured. It's probably
17 mostly secured, if you know what I mean, partially
18 secured. There is equity in the property over and
19 above the first mortgage and the taxes, but
20 there's not enough to pay it off in full. And so
21 the concern is that Walter Somm, a third party,
22 innocent guy, will have to file a lawsuit to
23 foreclose his mortgage. Eliot is potentially
24 going to be a party to that lawsuit because he's a
25 tenant. Mr. Somm will probably spend a hundred or

1 \$200,000 in legal fees fighting with Eliot
2 Bernstein. And then at the end of the day, poof,
3 there is nothing left. And the estate's \$365,000
4 mortgage is worth nothing.

5 We've raised the issue with Mr. Brown. We
6 have worked very closely with him.

7 THE COURT: I understand.

8 What do you say Eliot?

9 MR. ELLIOT BERNSTEIN: Well, to deconstruct
10 all those lies -- you really want me to start --
11 my father bought a house for my children. It
12 wasn't an asset of the estate till suddenly the
13 guys who altered the estate documents put it on an
14 amended inventory, right after the long arm of the
15 law knocked on their door and said come to the
16 sheriff's office. This is part of an extortion.
17 I put it in motion to you. I asked for emergency
18 hearings. And what they have done is beyond
19 criminal. First of all, my -- the company, BFR,
20 is owned by my three kids entirely. The house --
21 trust owned the house. Okay. My brother and
22 Oppenheimer conspired -- and I got a whole bunch
23 of stuff showing what's happened here -- to take
24 over the management position of BFR. When my
25 father died there was supposed to be vote by the

1 members, my three minor children, which could be,
2 or my wife, as guardians, to elect a new member.
3 Instead, Spallina anointed Janet Craig of
4 Oppenheimer to self-anoint herself as manager of
5 BFR. Then after they misuse all these funds,
6 telling us, oh, we're going to use the kids'
7 education funds to pay your house expenses, when
8 there is all these other entities that have been
9 paying for the house for years, my brother --
10 Janet Craig of Oppenheimer says, oh, I'm turning
11 over the management to Ted. She hands him all my
12 personal files, my kids, all our statements,
13 bills, everything, which I don't even get the
14 bills. They've been going through BFR --

15 THE COURT: Okay. I got your position. Let
16 me ask you this. What's the relief that you're
17 asking for, though?

18 Hold on.

19 I don't know what the relief is, that's
20 what I'm trying to figure out.

21 MR. ROSE: The relief is for first -- at the
22 request of the curator, the curator would like to
23 transfer the asset to the trustee of Simon's
24 revocable trust.

25 THE COURT: The property that is owned by

1 Bernstein Family Realty, LLC?

2 MR. ROSE: No, technically, the asset is just
3 the mortgage.

4 THE COURT: Is the mortgage.

5 MR. ROSE: Yeah, you know, the tangible --

6 THE COURT: That's owned by the estate right
7 now.

8 MR. ROSE: It's owned by the estate and under
9 the control of Mr. Brown.

10 THE COURT: And you --

11 MR. ROSE: They would remain liable for --
12 the trustees of the revocable trust is liable for
13 the debts of a creditor. So, you know,
14 Mr. Stansbury's counsel is here and he would be
15 someone that might object to it. We're not asking
16 to transfer it, other than to have someone other
17 than Mr. Brown, who's not prepared to administer
18 the asset, to administer the asset. In fact, in
19 discussions I've had with Mr. Brown, I mean,
20 his -- one of Mr. Brown's discussions with me was
21 he could transfer all the assets in the estate to
22 the revocable trust. If the trustee of the
23 revocable trust could administer the assets, he
24 would still be liable to Mr. Stansbury for any
25 claims. And, you know, you could have Mr. Brown

1 as a curator take a very nominal role so we don't
2 have to incur as much money. Alternatively, we
3 could have the PR hearing which --

4 THE COURT: That's what we need to do. We
5 need to have the PR hearing.

6 MR. ELLIOT BERNSTEIN: We need to have an
7 evidentiary hearing on this, don't we, Your Honor?

8 MR. ROSE: But in the short --

9 THE COURT: Go ahead.

10 MR. ROSE: In the short term, if you look at
11 the exhibit we attached.

12 THE COURT: Yeah, go ahead.

13 MR. ROSE: The second mortgage. It's the
14 Exhibit A. I don't have tabs, I apologize, but if
15 you flip through --

16 THE COURT: I see it.

17 MR. ROSE: So there is a promissory note.
18 It's signed by Simon Bernstein. I mean, I don't
19 think there is any question that that's Simon's
20 signature. And he did it in July of 2008. And if
21 you go to the next page, which is the actual
22 second mortgage, it's recorded in the public
23 records of this county, on September the 4th,
24 2008.

25 MR. ELLIOT BERNSTEIN: Missing the promissory

1 note, which was supposed to be attached, but it's
2 not.

3 MR. ROSE: I didn't think -- I would request
4 that Mr. Bernstein not comment when I'm speaking.

5 THE COURT: Yeah, true.

6 MR. ROSE: So we have a mortgage, the second
7 mortgage. It's signed by Simon Bernstein. He set
8 up the structure with Bernstein Family Realty. I
9 don't care about the structure. We don't control
10 Bernstein Family Realty. We have nothing to do
11 with it. Our concern is very simply: If you ask
12 Eliot Bernstein what are you going to do when
13 Walter Somm files a foreclosure action, he's going
14 to tell you, I'm going to make Walter Somm spend
15 every penny he's got to try to foreclose the
16 mortgage on Bernstein Family Realty. And we're
17 going to be back here in two years, or whatever,
18 saying the mortgage is worthless because it's all
19 been burned away in fees. But at the same time, I
20 don't think it's appropriate for Mr. Brown or the
21 estate to buy the mortgage if -- until we take the
22 deposition of Mr. Bernstein and find out if he has
23 any issues with regard to the mortgage or the
24 structure. I mean, other, you know, everything,
25 you know, is a conspiracy.

1 THE COURT: I got it. All right.

2 MR. ELLIOT BERNSTEIN: Okay. I got more.

3 MR. FEAMAN: May it please the court.

4 THE COURT: Yeah.

5 MR. FEAMAN: Peter Feaman on behalf of

6 Mr. Stansbury, about the largest and only creditor

7 of the estate, sizeable amount, in a litigation

8 that's pending before Judge Blanc.

9 Mr. Stansbury's interest obviously is to preserve

10 or protect the assets of the estate in the event

11 that he's successful in his litigation. We've

12 been in touch with Mr. Somm. Mr. Stansbury

13 actually knows Mr. Somm, the first mortgage

14 holder. And it's a possibility that we can get

15 him to forebear for a little while until we get

16 this straightened out.

17 THE COURT: Why don't you try to do that.

18 Because I'd really like to get passed the PR stage

19 because that would clear the way to have things

20 done in the ordinary course here.

21 MR. FEAMAN: Right. So we think we can do

22 that.

23 THE COURT: Okay.

24 MR. FEAMAN: And he told me he won't do

25 anything precipitous. He knows -- he knew

1 Mr. Bernstein, he knows Mr. Stansbury, and --

2 THE COURT: All right.

3 MR. ELLIOT BERNSTEIN: Your Honor, one
4 last --

5 THE COURT: Okay. Hold on. No. No, I'm
6 deferring on the motion for instruction in this
7 matter.

8 MR. BROWN: Judge, on the PR thing just --
9 I'm going to go ahead and seek dates in early
10 August.

11 THE COURT: All right.

12 MR. BROWN: Because we have notices of
13 unavailability for July.

14 THE COURT: Okay.

15 MR. BROWN: And frankly, between now and
16 early August, I can minimize my fees by just
17 hanging on to what the estate's got.

18 THE COURT: If you guys will coordinate those
19 hearings.

20 MR. ELLIOT BERNSTEIN: I've never not
21 coordinated a hearing.

22 THE COURT: Okay. All right. What's next,
23 the last one.

24 MR. ROSE: Last one. Two motions to compel.

25 MR. BROWN: Actually, may I be excused?

1 THE COURT: Sure.

2 MR. ROSE: On the motion we just heard, Your
3 Honor, I'll send in an order that says the motion
4 is deferred. Mr. Stansbury will work with
5 Mr. Somm and report to the parties.

6 THE COURT: Exactly.

7 * * * *

8

9 ^ * * * *

10 MR. ROSE: We've got two motions to compel,
11 one is very simple. One is more complicated.
12 They are in the same document. The first one is
13 just a deposition. I've asked Mr. Bernstein if I
14 could take his deposition, get some dates. He
15 indicated that he would not appear for deposition
16 for whatever reason. And I just think we need an
17 order compelling him to appear for deposition
18 within 20 days or something to that effect.

19 THE COURT: Okay. And the matters you want
20 to depose him on are what?

21 MR. ROSE: There are a number of pending
22 petitions. So -- they're set for evidentiary
23 hearing. Some of them involve things he wants the
24 trustee or the personal representative to do for
25 him and --

1 THE COURT: Hold on. Elliot, do you have
2 pending petitions?

3 MR. ELLIOT BERNSTEIN: I do.

4 THE COURT: Okay. And you want hearing dates
5 on those, correct?

6 MR. ELLIOT BERNSTEIN: All of them.

7 THE COURT: Okay. So two things are going to
8 happen. You're going to get hearing dates and
9 you're going to sit for deposition.

10 MR. ELLIOT BERNSTEIN: I never said I
11 wouldn't sit for a deposition.

12 THE COURT: He just said you wouldn't.

13 MR. ELLIOT BERNSTEIN: He says things for me
14 that are just completely untrue, like the last
15 whole litany of things he said I said about Walt
16 Somm. By the way, I got a letter from Walt Somm
17 that addresses -- that he's mortified what they're
18 doing.

19 THE COURT: Okay. So the answer is -- I want
20 to you sit for deposition. They are entitled to
21 depose you on the outstanding --

22 MR. ELLIOT BERNSTEIN: Maybe.

23 THE COURT: And I want hearing dates.

24 MR. ELLIOT BERNSTEIN: Okay.

25 THE COURT: I want the deposition to take

1 place before the hearing dates.

2 MR. ELLIOT BERNSTEIN: Well, I need to have
3 the hearings if they're qualified to be PR, as my
4 brother's saying he's successor trustee here
5 before you today. He's never sent out notice.
6 The guys you threw out of here that were acting
7 that way, haven't noticed anybody that they
8 transferred it to Ted, that he's accepted,
9 accountings haven't been sent out, no
10 procedural -- in fact, you appointed my brother on
11 my mom's estate, God knows how long ago, no
12 accountings. We have three years, no accountings
13 in my mother's estate or trust. There is robbery
14 and fraud going on right before your nose every
15 day because these two clowns continue to
16 represent --

17 THE COURT: Cool it. Cool it. We don't --

18 MR. ELLIOT BERNSTEIN: Okay. Whatever.

19 THE COURT: No. No. Stop.

20 MR. ELLIOT BERNSTEIN: Okay. These two
21 people are not following any rules or procedures
22 and we keep having hearings that are hurting my
23 family with people who are working to hurt me and
24 haven't followed a single rule of things. He
25 hasn't notified anybody.

1 THE COURT: You're going to schedule your
2 hearings. You'll call up and my assistant will
3 give you three or four hearing dates. You'll
4 call, you'll coordinate, and, you know what, if
5 you're getting -- if you say -- if you say that
6 they are not cooperating, pick a date.

7 MR. ELLIOT BERNSTEIN: Okay.

8 THE COURT: Pick a date. If you say that --
9 and that's the rule that applies.

10 MR. ELLIOT BERNSTEIN: Okay. Perfect.

11 THE COURT: If one side says the other side
12 is not cooperating, pick a date, and then I'll
13 determine whether there is in-proprity.

14 MR. ELLIOT BERNSTEIN: Okay. And I don't
15 want to be deposed before I have those hearings to
16 see if they are qualified to depose me.
17 Because --

18 THE COURT: No, I'm letting them take your
19 deposition on your pending petitions. Okay. On
20 your petitions that you're going to get hearing
21 dates on, they can take discovery.

22 MR. ELLIOT BERNSTEIN: Oh, just on that.

23 THE COURT: On those matters, yeah. That's
24 what he's asking for to be able to take your
25 deposition.

1 MR. ELLIOT BERNSTEIN: That's fine. Okay.

2 MR. ROSE: There is a hearing currently set
3 for July 12th. It's an hour hearing on some
4 objections to accountings.

5 THE COURT: Okay.

6 MR. ROSE: On behalf of the trustee, we got
7 an extension to file objections to accountings.
8 Mr. Block, who represents Tescher & Spallina, is
9 here, he wasn't in the loop for that. So we have
10 an hour of your time reserved for -- I would
11 suggest it might be appropriate to have a status
12 conference. We can have the status conference
13 before the August evidentiary hearing on all the
14 pending matters, where everyone can come in and
15 actually go over the pending matters, see what
16 issues could be resolved and what issues are open,
17 because we have an hour of your time, which is
18 valuable.

19 THE COURT: Okay. Fine.

20 MR. ROSE: That's good. Then the last motion
21 we have is the second half of this, we've
22 addressed this issue once. This is the e-mail
23 that my client inadvertently sent to Elliot
24 Bernstein.

25 THE COURT: I thought I dealt with this

1 already.

2 MR. ROSE: You did deal with it. You dealt
3 with it in sort of an informal way, if you recall.
4 It happened on Thursday night, we were here Friday
5 morning. I raised it because I was concerned that
6 I wanted it to be dealt with immediately.

7 THE COURT: This is the inadvertent
8 disclosure?

9 MR. ROSE: Yes, sir. And Mr. Bernstein said
10 he would comply with what Your Honor said. We
11 have a transcript of the hearing.

12 MR. ELLIOT BERNSTEIN: You told me to go home
13 and read the rule --

14 THE COURT: There is a rule that says --

15 MR. ELLIOT BERNSTEIN: I read it. It's not
16 privileged. It's a letter from my brother to me,
17 there is no attorney involved. I don't know what
18 they're talking about. This is more of this
19 harassment. And when you read this letter, the
20 reason why they want to hide this letter between
21 my brother and me --

22 THE COURT: But it's you -- put the letter
23 aside for a moment. If there is a claim of
24 inadvertent disclosure -- which is what they made,
25 right?

1 MR. ELLIOT BERNSTEIN: Correct.

2 THE COURT: Then under the rule, you do what
3 you're supposed to do.

4 MR. ELLIOT BERNSTEIN: Okay. Let's say that
5 my brother inadvertently sent me an e-mail saying,
6 hey, let's murder my brother, which is basically
7 what this says. And then all of a sudden they
8 want to retract it and pull it back, hide it from
9 the world. They've gotten a levied threat across.
10 Now, I sent this letter, as I told you, the minute
11 I read it to everybody who's named in it. And
12 I've already had two people call saying they are
13 afraid of my brother being crazy and starting to
14 harass them based on this letter.

15 THE COURT: We're getting far afield.

16 MR. ELLIOT BERNSTEIN: Okay.

17 THE COURT: Did you respond pursuant to the
18 rule?

19 MR. ELLIOT BERNSTEIN: Yeah, I told him I
20 don't believe so, let's set a hearing.

21 MR. ROSE: At the hearing on the date Elliot
22 said he'll do all that, he'll do what you told him
23 to do. And then he e-mailed me --

24 MR. ELLIOT BERNSTEIN: Yeah, and he --

25 MR. ROSE: Can I, sir, please speak?

1 MR. ELLIOT BERNSTEIN: Yeah. Yeah.

2 THE COURT: Okay.

3 MR. ROSE: So I got an e-mail from Elliot
4 after the hearing that says I just got back and
5 will definitely delete and destroy the e-mail in
6 accordance with the law. That's the first e-mail
7 from Eliot. That was at 1:05 on the day of the
8 hearing. And then I got -- at 3:30 an e-mail from
9 his colleague, Crystal Cox, who's the woman that
10 blogs things, basically using expletives against
11 me. And then Ms. Cox has taken the letter that
12 was privileged and has republished it, e-mailing
13 it to lawyers in the case, and putting it on the
14 Internet. And then I got an e-mail from Elliot
15 telling me he will not comply with the issue and
16 he wants to challenge the assertion of the
17 privilege. So I realize this was an 8:45 and I,
18 you know, would -- might need to be set for an
19 evidentiary hearing -- but we're here and we could
20 do an evidentiary hearing to decide this privilege
21 issue.

22 MR. ELLIOT BERNSTEIN: Yeah, I'd like to do
23 that.

24 THE COURT: Hold on. After Elliot got the
25 notice of inadvertent disclosure, did he file a

1 response, Mr. Rose?

2 MR. ROSE: He has not filed a response in the
3 court.

4 THE COURT: To you, though?

5 MR. ROSE: He did respond to me.

6 THE COURT: Let me read this. Did he say
7 that -- did he do what the rule says, party
8 receiving a notice of inadvertent disclosure
9 either destroys the matters and says that, you
10 know, they've taken care of it and nothing is
11 being disclosed, disseminated, or they can
12 actually --

13 MR. ELLIOT BERNSTEIN: It's not an
14 inadvertent disclosure --

15 THE COURT: But they've made that claim it
16 is, though.

17 MR. ELLIOT BERNSTEIN: Okay.

18 THE COURT: The rule says, if you want to
19 challenge that, you have to do that in writing.

20 MR. ELLIOT BERNSTEIN: I did. I told him,
21 I'm challenging it, let's have a hearing.

22 THE COURT: Okay. All right. So then he
23 said a challenge, he said it wasn't privileged.
24 That's one of the grounds.

25 MR. ROSE: In an e-mail he's taken the

1 position that it's not privileged, it was intended
2 for him.

3 THE COURT: That's one of the rule-related
4 items you can mention.

5 MR. ROSE: During -- in the intervening time
6 he's not allowed to be sending it out to --

7 MR. ELLIOT BERNSTEIN: I haven't sent it to a
8 single person that didn't already get it before I
9 came to this court. I contacted all those people
10 out of respect to Your Honor. And what my word
11 was, and I said, hey, guys, here's a rule, you're
12 supposed to destroy this possibly, contact your
13 lawyer. Whatever. Crystal Cox said to him, screw
14 you. I don't control her. She's a blogger.
15 Nobody seems to be able to control her, but that's
16 her. And he's --

17 THE COURT: Okay. All right.

18 MR. ROSE: This is one of the --

19 THE COURT: You can set that for hearing.

20 MR. ROSE: There's one other part of our
21 motion, we asked for an injunction. He did say he
22 can't control Crystal Cox. He sends her
23 everything in this case. He sends her every
24 pleading, every order. He sent her my privileged
25 e-mail. Her e-mail to me says, I cordially invite

1 you to go blank yourself. And then she goes out
2 on me. And then she sends the e-mail, the same
3 e-mail, this privileged e-mail, she sends to every
4 counsel and party in the case twice already. He
5 should be enjoined from communicating with her.

6 THE COURT: So he's already made a statement
7 on the record, that is Elliot, that since the time
8 that he got the notice of inadvertent disclosure,
9 he has made no new disclosure to anyone, true?

10 MR. ELLIOT BERNSTEIN: True.

11 THE COURT: Okay.

12 MR. ROSE: So --

13 MR. ELLIOT BERNSTEIN: I did everything else
14 just to be safe.

15 THE COURT: Set it for hearing.

16 MR. ROSE: An evidentiary hearing?

17 THE COURT: Yes.

18 MR. ROSE: Okay.

19 THE COURT: On whether it's privileged
20 because that's what the rule says.

21 Go ahead, folks. Thanks.

22 MR. ROSE: Do you want the order from the
23 first or you want me to just mail them in?

24 THE COURT: You can mail it in.

25 I got a 9:30 still to do.

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(Thereupon, the proceedings were

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concluded at 10:35 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 15th day of June, 2014.

DAVID L. MARSAA, COURT REPORTER

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR
PAM BEACH COUNTY, FLORIDA

File No. 50 2012 CP004391XXXXSB
Probate Division

IN RE: ESTATE OF SIMON L. BERNSTEIN
_____ /

CURATOR'S MOTION FOR INSTRUCTIONS REGARDING
AUTHORITY TO LIQUIDATE IRA

CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION
OF ESTATE TANGIBLE PERSONAL PROPERTY

DATE TAKEN: Thursday, June 19, 2014

TIME: 8:45 a.m. - 9:45 a.m.

PLACE: PALM BEACH SOUTH COUNTY COURTHOUSE
200 West Atlantic Avenue
Delray Beach, Florida 33444

BEFORE: HONORABLE MARTIN COLIN, CIRCUIT JUDGE

HEARING TAKEN BEFORE:

LISA GREENWELL, Court Reporter

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1 (Thereupon, the following proceedings were
2 had:)

3 MR. ROSE: Morning, Your Honor.

4 THE COURT: Hi. What do you have?

5 MR. ROSE: We have three orders from last
6 weeks hearings that I submitted to all counsel.
7 Mr. Eliot Bernstein has an objection to all three
8 orders.

9 If I may, these were Motions to Compel,
10 fairly simple -- may I approach with the orders.

11 MR. ROYER: Mr. Bernstein has some
12 objection, I believe.

13 THE COURT: Okay.

14 MR. ROSE: Just three different orders.

15 THE COURT: So I ruled on these matters,
16 right?

17 MR. ROSE: You ruled on the matters and no
18 other counsel has objected to the form
19 of the orders.

20 Mr. Eliot Bernstein has some objections that
21 he's e-mailed to me in a lengthy e-mail.

22 THE COURT: So here's the way this works
23 everyone; I enter an order, someone becomes a
24 scrivener and writes out what an I ruled. It's
25 not a chance to change it, not a chance to argue

1 with it, it's just putting into writing what my
2 rulings is.

3 If I find that anyone tries to argue to
4 rework the order, the merits of the order, the
5 subject, today, this morning, there will be
6 sanctions granted, okay.

7 So you say on behalf of your side that these
8 orders represent what I ruled?

9 MR. ROSE: I submit -- yes.

10 THE COURT: And everyone else agrees it's
11 what I ruled except for Mr. Eliot Bernstein?

12 MR. ELIOT BERNSTEIN: Correct.

13 THE COURT: And you say I ruled this?

14 MR. ELIOT BERNSTEIN: I said that I was --
15 we were tricked by Mr. Rose on some of that stuff
16 that needs to be reheard. I put in an objection
17 to --

18 THE COURT: That's not what I'm asking.
19 That's not the purpose of this exercise.

20 I gave --

21 MR. ELIOT BERNSTEIN: The order --

22 THE COURT: I announced what the purpose of
23 this was. If you proceed and try to do anything
24 other than tell me that this is not what
25 I ruled --

1 MR. ELIOT BERNSTEIN: I have an order on it.
2 I don't mind --

3 THE COURT: You're not doing me a favor by
4 telling me that.

5 MR. ELIOT BERNSTEIN: Listen, I'm putting in
6 the objection the minute you sign that, that it
7 was -- so use it for my objection right here.

8 THE COURT: Well, I have to have -- if you
9 want to have something reheard --

10 MR. ELIOT BERNSTEIN: Here's the problem --

11 THE COURT: -- you have to enter an order.
12 Listen to me.

13 MR. ELIOT BERNSTEIN: Okay.

14 THE COURT: Okay. You have to have an order
15 entered to have an rehearing on it.

16 MR. ELIOT BERNSTEIN: Okay. I get that.
17 But here's my problem, he is submitting orders
18 and he's got adverse interest in this case that
19 legally preclude him from acting in these
20 capacities --

21 THE COURT: No, that's not true because if I
22 ask him to be a scrivener and write an order on
23 that I order, that's not task that's here.

24 MR. ELIOT BERNSTEIN: But he's legally
25 barred from representing when he has adverse

1 interest.

2 THE COURT: That's your position on that.

3 MR. ELIOT BERNSTEIN: No, that's the Bar
4 rules, that's the law.

5 THE COURT: But I told him to write
6 an order -- I told him write an order on what
7 I've done.

8 MR. ELIOT BERNSTEIN: I know, but he's
9 acting out of his capacities --

10 THE COURT: Okay. That's your version of
11 it.

12 MR. ELIOT BERNSTEIN: No, that's --

13 THE COURT: I don't deal with bar things
14 here, I'm dealing --

15 MR. ELIOT BERNSTEIN: It's law. He's not
16 qualified.

17 THE COURT: Mr. Bernstein, you're not
18 listening, okay. If I ask a lawyer to put into
19 writing that which I order and they do that, then
20 they're doing the right thing because that's what
21 I've asked them to do.

22 We don't the have here in State Court clerks
23 to write out my order, so I need the lawyers to
24 write what I announce. I asked him to do it.

25 MR. ELIOT BERNSTEIN: Well, I've also asked

1 that you have adverse interest in these matters
2 and you shouldn't be ruling on the case under
3 law.

4 THE COURT: Okay. I am not sure what you're
5 getting at. You can put whatever you want in
6 writing.

7 Your participation in this hearing this
8 morning, listen to me, it's over with. If you
9 speak again because you're now -- you're pro se
10 but you are violating some rules of decency and
11 civility.

12 Don't speak again unless I speak to you. If
13 you speak again, I'm going to take action against
14 you that will be adverse to you immediately by my
15 bailiff. Understand what I said, yes or no, it's
16 all you can say?

17 MR. ELIOT BERNSTEIN: Yes.

18 THE COURT: Okay, that's one.

19 Okay. Come on up. All three are right
20 here.

21 What else in this case, anything else?

22 MR. ROSE: We have a Motion to Continue this
23 hearing is set for July the 11th.

24 MR. BROWN: Judge, I noticed mine first.

25 THE COURT: Okay. Whoever noticed things

1 first.

2 MR. ROSE: Sorry.

3 MR. BROWN: I have two motions, Your Honor.
4 One is a Motion For Instructions Regarding
5 Authority to Liquidate an IRA. The Estate,
6 through a series of occurrences, ended up with
7 the Decedent's IRA. It's at about 541,000. It
8 holds equity. Although it is performing very
9 well, it should be converted to cash.

10 It's not appropriate for the Estate to hold
11 an IRA -- I don't believe it's appropriate for
12 the Estate to hold an IRA that's holding equities
13 that could --

14 THE COURT: Okay. Let's me hear from anyone
15 else your position on this starting from my left
16 to right, I'll catch everybody.

17 MR. ROYER: Jeff Royer, counsel for William
18 Stansbury. We have no objection for.

19 MR. ROSE: We have no objection to
20 liquidating the IRA.

21 MR. ELIOT BERNSTEIN: I do have an
22 objection.

23 THE COURT: Okay. What is it?

24 MR. ELIOT BERNSTEIN: Well, Ben was going to
25 get some information that appears that the

1 beneficiary is lost, it's bizarre. Again, we have
2 another missing beneficiary on behalf of the
3 Estates that could be a part of the furtherance
4 of fraud.

5 We're waiting for the JP Morgan statements
6 Ben was going to get. We haven't got 'em yet.

7 Until all that's decided, this IRA might be
8 to a beneficiary and the covering up of the
9 beneficiary might be part of the furtherance of a
10 frauds that have already occurred to try to
11 change beneficiaries in this case in this court
12 before Your Honor by the same people, I believe.

13 THE COURT: Okay. So is this -- is there a
14 beneficiary on the IRA form?

15 MR. BROWN: We're not able to locate,
16 apparently, a beneficiary form. That's why the
17 Estate ended up with the IRA. But this has --
18 this is --

19 THE COURT: So who --

20 MR. BROWN: -- this is not a distribution --

21 THE COURT: No, I understand that.

22 MR. BROWN: -- this is just to divert cash.

23 THE COURT: All right. But are you going to
24 keep the cash segregated in the Estate account
25 and not be used for any other purpose without

1 order of the Court so in case a beneficiary of
2 this IRA can be found, then the beneficiary would
3 be entitled to the IRA as opposed to the Estate?

4 MR. BROWN: That's correct. And Your Honor,
5 it would actually stay in the IRA because once
6 it's converted to cash, if it starts getting
7 distributed then it's taxed. So that's why it's
8 only to convert to cash.

9 THE COURT: Okay. But stay there, not used
10 without court order.

11 MR. BROWN: Correct.

12 THE COURT: Is that --

13 MR. ELIOT BERNSTEIN: If you're good with
14 it, I'm good with that.

15 THE COURT: Okay, that's fine. As long as
16 it stays that way.

17 MR. BROWN: I'll just need to write on the
18 easel that.

19 THE COURT: I'm all right with that as long
20 as it's -- so you folks do your due diligence.
21 If you find a beneficiary, then the beneficiary
22 will make a claim to it, but it will be held
23 intact.

24 MR. ELIOT BERNSTEIN: By the way, Your
25 Honor, that aspect was also not put into the

1 inventory of the Estate till after Tescher &
2 Spallina were being, you know, investigated and
3 their notary arrested for forgery and fraudulent
4 notarizations and all that nonsense, and so it
5 appears that this is might, also, be part of a
6 fraud, not just a missing beneficiary.

7 THE COURT: Well, it is what it is --

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: -- and anyone can do what they
10 think they need to do with it.

11 MR. ELIOT BERNSTEIN: Okay. So it's stated
12 for the record.

13 THE COURT: Okay.

14 MR. BROWN: So I'll include in the order
15 it's to stay intact in the IRA until further
16 order of the Court.

17 THE COURT: Okay.

18 MR. BROWN: My other motion is to inspect
19 and take possession. This is mostly an appraisal
20 so don't worry.

21 THE COURT: Okay.

22 MR. BROWN: There's tangible personal
23 property that belongs to the Estate. It's
24 located now in the Decedent's residence which is
25 owned by the Decedent's Irrevocable Trust.

1 There have been questions raised as to
2 whether or not some of the tangible personal
3 property when the Decedent died was located in a
4 condominium that was then sold and the
5 property was purportedly sent to the residence,
6 so there's some question as to whether or not all
7 that property that's on the appraisal is now
8 located in the residence which is in St. Andrews
9 Country Club.

10 So we called the appraiser and asked how
11 much would it be for you to go into the residence
12 at St. Andrews Country Club and simply do an
13 inventory of your appraised items. And he said
14 about \$500 unless things are boxed up and very
15 inaccessible.

16 THE COURT: So he's appraised the items
17 already?

18 MR. BROWN: This is Robert Hittle is his
19 name. He said about \$500 if everything is
20 accessible.

21 THE COURT: Well, what I'm getting at is,
22 this which you've attached to your motion is the
23 appraisal?

24 MR. BROWN: Correct. Which list all the
25 items.

1 THE COURT: So the question is, did you
2 inventory of where those items are now?

3 MR. BROWN: To do an inventory to make sure
4 they're there at the residence. And then once we
5 make that determination, then what I would
6 envision the Court doing is just entering an
7 order requiring whoever the trustee is, make sure
8 those items stay there pending further order of
9 the Court because storing them to be expensive.

10 THE COURT: Are all the items -- so you are
11 no the sure whether all the items that are on
12 this appraisal are in the St. Andrews home or
13 not?

14 MR. BROWN: I'm absolutely not sure and I am
15 not qualified to walk in there and try to figure
16 it out.

17 THE COURT: So where -- But here it says,
18 I'm looking quickly at the appraisal, where the
19 items were when he did the appraisal.

20 MR. BROWN: Right.

21 THE COURT: So they're not there any longer?

22 MR. BROWN: Some of them -- the Decedent had
23 a condo on the beach, I believe, and had the
24 house in St. Andrews. Some of them were in the
25 condo, some of them were in the house.

1 When the condo was sold --

2 THE COURT: Okay.

3 MR. BROWN: -- during the --

4 THE COURT: So they either got moved to the
5 house or they're somewhere else?

6 MR. BROWN: Correct.

7 THE COURT: Okay. All right. Left to
8 right, what do you say about the motion?

9 MR. ROYER: No objection.

10 MR. ROSE: We have some objection to this.

11 THE COURT: Okay.

12 MR. ROSE: Okay. The first thing is, this
13 is an Eliot Bernstein motivated motion. All this
14 stuff was inventoried in both properties.

15 It's an issue that the prior personal
16 representatives had looked into and in one sense,
17 if Eliot wants to pay the \$500 for another
18 appraisal, that's fine, but --

19 THE COURT: No. But he doesn't want an
20 appraisal.

21 MR. ROSE: I mean, he wants the appraiser to
22 go out and inventory it at a cost of, at a
23 minimum, of \$500 which we think if Eliot wants to
24 have an inventory, he should bear the expense of
25 it.

1 This is all -- the items were in two
2 different residences, the residence --

3 THE COURT: So the items that were in the
4 home are purportedly still there. The items that
5 are in the condominium, is that the issue, now
6 that the condo's been sold, where are those
7 items?

8 MR. ROSE: Some of the items, some furniture
9 was left at the condo when it was sold. There
10 may be some allocation issue at some point to do
11 between the money that should go to the Estate
12 and the money should go to the Trust.

13 It may not matter at the end of the day
14 because the ten beneficiaries are the same in
15 both. I think the prior PR's decided to table
16 the issue 'til a later date. We will get a new
17 PR at some point. Maybe the new PR should take
18 this up.

19 You know, my client has --

20 THE COURT: Okay. I understand your
21 position.

22 MR. ROSE: Okay.

23 THE COURT: Okay. Eliot, what do you say?

24 MR. ELIOT BERNSTEIN: Well, first that his
25 position is argued improperly because he's

1 adverse.

2 And second, we need a new appraiser. I saw
3 that --

4 THE COURT: That's not the motion, though.

5 MR. ELIOT BERNSTEIN: No, I know, but in --
6 just for record.

7 THE COURT: Well, no, but I don't want to
8 deal with an item that's not before of me.

9 MR. ELIOT BERNSTEIN: I don't want you to
10 rule on an appraiser going back there of the same
11 guy.

12 THE COURT: Okay, that's the motion. So I'm
13 asking what your position is.

14 MR. ELIOT BERNSTEIN: I'm telling you why
15 we're objecting to that.

16 THE COURT: Okay.

17 MR. ELIOT BERNSTEIN: Stansbury's attorneys
18 had put in that they question the appraisals on
19 these items and I do to.

20 We believe we found some evidence that there
21 might be fencing of jewels in some of the
22 appraisals done by the former PR's who are
23 involved in frauding documents, forging
24 documents, all that good stuff.

25 And so now we found out, reported it to the

1 police, they have condo investigations of this
2 stuff, and so Ben Brown, you know, didn't
3 know -- when we looked at the record they
4 submitted, which is shotty, there's not a single
5 thing that says they paid for moving costs of any
6 furniture to the St. Andrews home and Ben
7 couldn't find it either. And, you know, we -- I
8 said we do and this is what he did.

9 So you know, I support that it be done but
10 by a different appraiser that's qualified.

11 THE COURT: Well, I don't know that you need
12 an appraiser to do an inventory.

13 MR. ELIOT BERNSTEIN: Okay, the inventory,
14 correct.

15 THE COURT: Because it's not going to be
16 appraised. Basically what you're saying is,
17 here's the appraisal. They have, you know, a
18 bunch of items --

19 MR. ELIOT BERNSTEIN: But anything involved
20 in the past.

21 THE COURT: Where are those items, that's
22 the question, Mr. Brown?

23 MR. BROWN: The question is, whether the
24 items are there at 77020 Lyons Head and whether
25 or not they're the same items that appear on the

1 appraisal.

2 The reason we called Mr. Hittle is because
3 he's the one who actually looked at them,
4 photographed them and described the items on the
5 appraisal.

6 THE COURT: If he'll do it for a maximum, a
7 maximum not a minimum, a maximum of \$500 I'll
8 allow it.

9 MR. ELIOT BERNSTEIN: Can we get someone
10 else --

11 THE COURT: No, he can do it because he's
12 the one who can identify --

13 MR. ELIOT BERNSTEIN: But he's involved with
14 the prior guys --

15 THE COURT: But here's the thing, it's going
16 to cost more to have some one clean and I rather,
17 you know, use the money more wisely and allow him
18 just to identify.

19 So he can do this, but Mr. Brown, someone
20 else has to be present when he does this.

21 MR. ELIOT BERNSTEIN: Can I be there?

22 THE COURT: Okay. Well --

23 MR. ELIOT BERNSTEIN: I haven't been to my
24 parent's home since they locked me out.

25 MR. BROWN: If I'm there it's \$350 an hour,

1 so it defeats the purpose.

2 THE COURT: Okay.

3 MR. ROSE: We object to the

4 Eliot Bernstein --

5 THE COURT: Yeah, I rather not have an
6 active party there.

7 MR. ELIOT BERNSTEIN: Can I be there as a
8 witness?

9 THE COURT: But here's the thing, if you're
10 there, then they're going to want someone to be
11 there and all of sudden, it's going to be a show.

12 MR. ELIOT BERNSTEIN: I don't mind.

13 THE COURT: I'm trying to avoid that from
14 happening.

15 MR. ELIOT BERNSTEIN: I know, but I'm trying
16 to avoid further fraud.

17 MR. ROSE: Your Honor, may I?

18 Mr. Bernstein, Ted Bernstein who's the Trustee of
19 the trust that owns the house will unlock the
20 door and stay outside.

21 And this gentleman's a professional. I
22 think we could trust him to go inventory it last
23 time and I think if we let him in by himself, I
24 don't think he's going to it steal anything.

25 MR. ELIOT BERNSTEIN: He's directly involved

1 in the prior frauds in advancing these schemes on
2 the court and everybody else to get
3 beneficiaries --

4 THE COURT: Okay, here's what I will allow.
5 So, on the date of the appointment for this
6 fellow to go to the house, the house, I assume,
7 is locked. Ted Bernstein has the key?

8 MR. ROSE: Yes.

9 THE COURT: Okay. All right. So Eliot, you
10 can be there as well.

11 MR. ELIOT BERNSTEIN: Thank you.

12 THE COURT: But not to go in the house,
13 okay. So you can watch the appraiser go in
14 there --

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: -- he'll do his thing, he'll
17 come out. And assuming he's not carrying boxes
18 of items, it's probably a good idea he's not
19 stealing anything from inside, okay, because
20 that's the question. I mean, but he can do --

21 Okay. You can write that in the order. You
22 both can watch to make sure he doesn't prolong
23 any items in there.

24 MR. BROWN: I'll write that.

25 THE COURT: Yeah, write that in. Have fun.

1 What else?

2 MR. ROSE: We have a Motion to Continue.
3 There's some hearings set for July 11th. I
4 addressed it at the prior hearing. There was
5 some confusion, so I withdraw the order I was
6 going to submit and start from scratch.

7 There's two hearings on July 11th. One is
8 Eliot's Motion For Trust Construction in the
9 Shirley Trust and one is his objections to the
10 accountings of Tescher & Spallina.

11 THE COURT: In the Simon Trust?

12 MR. ROSE: In the Simon Trust -- in the
13 Simon Estate.

14 Tescher & Spallina are unavailable for those
15 days. I've obtained on behalf of Ted as the
16 Trustee of his father's trust an extension to
17 obtain -- to make objections until time after
18 the -- sometime after the PR is appointed because
19 the PR is the one who really should prosecute the
20 objections. So we've asked to continue those
21 hearings.

22 Everyone was in agreement. And I did bring
23 it last week, thought it was an agreement.
24 Mr. Bernstein objected. So I withdraw what we
25 did last week and now we're just formally asking

1 you to continue those hearings for a variety of
2 reasons.

3 One is, we have two hours set aside. We
4 have to have, maybe, half a day or a day trial on
5 a Trust Instruction Action or maybe more, there's
6 other parties involved and the objections to the
7 accounting are going to take a long time.

8 What we've asked you to do because there's a
9 myriad of --

10 THE COURT: Let me just --

11 MR. ROSE: We have to have status
12 conference --

13 THE COURT: One of the problems is that
14 Eliot says he can't get hearing dates. And so,
15 at least, what you're telling me is set on July
16 11th, one of those matters is his Motion For
17 Trust Construction, so why can't that be heard?

18 MR. ROSE: Well, it's going to take a day or
19 two to have that heard. We need discovery.

20 We'd asked for -- what I'd suggest is, if we
21 have a status conference on that day, we can go
22 through all the motions that are pending and
23 figure out what actually needs to be heard,
24 what's agreed upon and, you know, set the case to
25 where it's manageable.

1 To have the Trust Construction, first of
2 all, it's filed in the wrong case. I don't know
3 if it's been properly noticed to everybody --

4 THE COURT: That, I don't know. I know you
5 tell me there's a hearing date. Beyond that, I
6 don't know whether it's done properly or not, but
7 that's a matter in the Shirley's case.

8 MR. ROSE: That's in the -- Yeah, I filed it
9 this Motion to Continue in both cases.

10 THE COURT: No. But Eliot's Trust
11 Construction motion is in the Shirley Bernstein
12 case?

13 MR. ROSE: Correct. In the Shirley
14 Bernstein Estate, it's merely construed as the
15 Shirley Bernstein Trust, it's not properly --

16 THE COURT: Do you have a copy of your
17 motion that's set?

18 MR. ELIOT BERNSTEIN: No, but it's in Simon,
19 you can look it up on the record. I have a
20 docket here.

21 THE COURT: So is it in Simon's Trust case
22 or -- Simon's Estate or Shirley's Estate?

23 MR. ROSE: The Trust Construction, I think,
24 is in Shirley's Estate.

25 THE COURT: And they say no. So I kind of

1 would like to know that.

2 MR. BROWN: Okay. I probably have a copy of
3 it.

4 MR. ROSE: It is in the Simon Estate. So
5 we have in the Simon Estate, they's a document
6 that wants to construe as the Shirley
7 Bernstein Trust, it's

8 MR. ELIOT BERNSTEIN: No.

9 THE COURT: I just heard Eliot say this has
10 nothing to do with the Shirley Bernstein Estate.
11 This is Petition For Construction of Testament
12 Trust of Removal of Trustee And Trust Accounting
13 in the Simon case. That's what it pertains to,
14 all about Simon?

15 MR. ELIOT BERNSTEIN: I thought so.

16 THE COURT: Well, we have -- as far as the
17 accounting goes, there's been an accounting,
18 there are objections to the accounting, I have to
19 hear that, so --

20 MR. ELIOT BERNSTEIN: No trust accounting,
21 neither Estate. God knows how many rules that
22 violated.

23 THE COURT: I am not sure why I can't hear
24 this motion. I mean, assuming -- I mean, he
25 obviously has to make sure everyone's served and

1 it has to be done pursuant to the rules.

2 Okay. I'm going to hear this motion.

3 MR. ROSE: There is --

4 THE COURT: But the hearing, at the same
5 time on the objections to the accounting, we're
6 not going to do that because we're never going to
7 have time. This will take two hours in and of
8 itself anyway and it's -- You know, it's just not
9 helpful to try to squeeze things in.

10 Mr. Brown, what do you say?

11 MR. BROWN: Well, my suggestion is, Your
12 Honor, I had tried to set the Motion to Appoint
13 Personal Representative for July 16th.

14 THE COURT: Okay.

15 MR. BROWN: And I think that Mr. Glasko and
16 Mr. Feaman have issues with July 16th, but
17 July 11th would be clear.

18 And it makes sense to go ahead and have the
19 Motion to Remove the Trustee, who's
20 Ted Bernstein, and petition to appoint -- the
21 competing petitions to appoint the personal
22 representative --

23 THE COURT: All right. I like that idea
24 because I think we need to get a PR in here if we
25 can.

1 MR. BROWN: I agree.

2 THE COURT: Okay. Any reason we can't do
3 both of those on that date?

4 MR. ELIOT BERNSTEIN: Well, Your Honor --

5 THE COURT: Well, because if I remove a
6 trustee, I need someone to fill the blank there,
7 I need a PR.

8 MR. ROSE: That's not going to be a two-hour
9 trial, that's going to be an all day affair, at
10 least.

11 THE COURT: Okay.

12 MR. ROSE: And --

13 THE COURT: All right.

14 MR. ROSE: This is my concern; we have --
15 there was a block of time on July 16th. And I
16 suggested that -- everyone agreed last week,
17 other than Eliot, that it made sense to have a
18 status conference.

19 THE COURT: Hold on. Let me take a look at
20 my calendar and see that time because I want to
21 make sure we have enough time to finish this.

22 Okay. I can give you three-and-a-half hours
23 on that day.

24 MR. ROYER: Your Honor, if I may,
25 Mr. Feaman is in mediation on that day.

1 THE COURT: On the 11th?

2 MR. ROYER: He was just on the calendar on
3 the 11th.

4 THE COURT: But everybody -- You know, I'm
5 not going to get a day where someone doesn't have
6 something, that's the problem.

7 MR. BROWN: Your Honor, respectfully,
8 Mr. Feaman, he has a dog in the fight in the form
9 of Mr. Stansbury, but he's not asking
10 to be -- Mr. Stansbury is not asking to be
11 Trustee nor is he asking to be personal
12 representative.

13 THE COURT: Yeah, I'm not too concerned
14 about him in this hearing.

15 MR. ROSE: I think he has filed a motion to
16 appoint Eliot Bernstein as personal
17 representative.

18 MR. ROYER: It's Eliot's motion.

19 THE COURT: So I have scheduled now on the
20 16th for half a day the Petition to Appoint PR.

21 MR. BROWN: Correct.

22 THE COURT: So why don't we do this, we're
23 going to start these hearings on the 11th. I'll
24 give you three-and-a-half hours.

25 If we don't finish, we move over to the 16th

1 which we have a half a day. We just have to
2 bifurcate it that day.

3 MR. ROSE: Okay.

4 THE COURT: So I'm going to deal with this
5 Petition For Construction and Removal. We're not
6 doing accountings and then we're going to deal
7 with the appointment of the PR in consecutive
8 time, so those two matters will take care of
9 those two days. Hold on one second, let me sign
10 this.

11 Okay. What else? Anything else from you?

12 MR. ROSE: Well, we still have to have a
13 status conference.

14 THE COURT: We'll discuss that. I mean,
15 yeah, before you all leave, at some point we'll
16 status.

17 Yes?

18 MR. ELIOT BERNSTEIN: Okay, I object.

19 THE COURT: To what part?

20 MR. ELIOT BERNSTEIN: To everything he said
21 because he's adverse.

22 THE COURT: He didn't say anything to object
23 to. He just said can we have a status
24 conference.

25 MR. ELIOT BERNSTEIN: I object to some of

1 the stuff he put in the record.

2 THE COURT: Yeah. But now I'm giving you
3 the hearing.

4 MR. ELIOT BERNSTEIN: Because it's false.

5 THE COURT: But this is UMC, I am not taking
6 testimony.

7 MR. ELIOT BERNSTEIN: Okay, gotcha. The
8 only thing I want that I think is important
9 first, is that you hear if he is adverse --

10 THE COURT: I'm going to hear everything
11 that the rules allow.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Someone will call a witness,
14 we'll have a hearing.

15 MR. ELIOT BERNSTEIN: No, no. My question,
16 I put in motions saying that his adverse interest
17 and cannot represent it any party as counsel
18 because he's a direct fact and material witness,
19 is involved in the perpetration of the
20 frauded (sic) document, he's been police
21 investigations --

22 THE COURT: Is there a formal Motion to
23 Disqualify?

24 MR. ELIOT BERNSTEIN: Yeah, it's all on
25 there. It's the one I asked you to disqualify

1 for the same reasons.

2 THE COURT: I don't represent anybody, so it
3 couldn't be for the same reasons.

4 MR. ELIOT BERNSTEIN: Well, under adverse
5 interest.

6 THE COURT: Okay. Do you have a Motion to
7 Disqualify from him?

8 MR. ROSE: I was going at that approach,
9 without comment. This was filed --

10 THE COURT: Yeah. So let me review it for
11 legal sufficiency, that's what I have to do. All
12 right.

13 MR. ELIOT BERNSTEIN: Sir, I voluntarily ask
14 you to disqualify because you have adverse
15 interest if you're a material and fact witness,
16 your name's on a bunch of documents --

17 THE COURT: Okay. I'll look at this motion
18 when I get off the bench at some point and I'll
19 either rule on it based upon its sufficiency or
20 I'll set it for hearing.

21 MR. ELIOT BERNSTEIN: Okay. But then --
22 okay.

23 THE COURT: But right now we have these
24 hearings dates.

25 MR. ELIOT BERNSTEIN: Before any hearing

1 happen, we you need --

2 THE COURT: I'll rule on this before the
3 11th?

4 MR. ELIOT BERNSTEIN: That's for you. It's
5 got a little bit of him. You want me to file a
6 separate motion --

7 THE COURT: This one is for -- hold on.

8 MR. ELIOT BERNSTEIN: In fact, Your Honor,
9 this document they're trying to become privileged
10 that's not between attorneys and clients is a
11 threatening letter that talks about legal abusive
12 strategies --

13 THE COURT: Okay. Slow down one second. I
14 thought this motion had to do with Mr. Rose, it
15 doesn't, this has to do with me.

16 MR. ELIOT BERNSTEIN: Yes.

17 THE COURT: Okay.

18 MR. ROSE: Right.

19 MR. ELIOT BERNSTEIN: But it does deal with
20 him, Your Honor.

21 THE COURT: Is there another motion that
22 deals separately with him?

23 MR. ELIOT BERNSTEIN: No, but if you want,
24 I'll do it.

25 THE COURT: No. Sure -- no, I'm not inviting

1 that. Okay.

2 MR. ELIOT BERNSTEIN: He should voluntarily
3 leave. I mean, he has bar rules and judicial --

4 THE COURT: Mr. Bernstein, this is UMC. We
5 have a big crowd here.

6 MR. ELIOT BERNSTEIN: Okay.

7 THE COURT: All right. I'll rule on this
8 and then -- was there a prior motion to
9 disqualify me?

10 MR. ELIOT BERNSTEIN: No.

11 THE COURT: Okay. So the rule is different
12 when there's a successive motion.

13 MR. ELIOT BERNSTEIN: The bottom line is,
14 that before we have those hearings on the 11th or
15 16th, or whatever you just said, we have to hear
16 if the counsel and the Judge are legally
17 qualified --

18 THE COURT: I just told you I'm going to
19 rule on this in the next day or two.

20 MR. ELIOT BERNSTEIN: You know they were
21 involved.

22 THE COURT: Mr. Bernstein, you are starting
23 to move past what the UMC allows me to do.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: File something in writing and

1 I'll look at it.

2 MR. ELIOT BERNSTEIN: I will. You got it.

3 THE COURT: Okay. Let me have the orders.

4 Okay, bye. Next case.

5 Write out the orders to make room --

6 MR. ELIOT BERNSTEIN: By the way, Your
7 Honor, part of this is my family's in danger.
8 That privileged letter that he's trying to hide
9 from your eyes and federal investigators and
10 everybody else, is a letter that talks about
11 using abusive legal strategies to harass me and
12 my father's friends -- listen.

13 THE COURT: No, no, stop, stop.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: You're beyond what UMC allows to
16 you do.

17 MR. BROWN: That is an e-mail that Eliot
18 wrote to me and I told him that I would give you,
19 talks about Mr. Rose's duty to disqualify
20 himself.

21 THE COURT: Okay.

22 MR. BROWN: That one I'm going to need the
23 original to certify JP Morgan. And this is the
24 other one, that I do not need back, just a copy.

25 Thank you, Judge.

1 THE COURT: Okay. Thanks.

2 (Thereupon, the hearing was concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) SS:
COUNTY OF WEST PALM BEACH)

I, LISA GREENWELL, Court Reporter, do hereby certify that I was authorized to and did stenographically report the HEARING before the Honorable Martin Colin, that a review of the transcript was requested; and that the foregoing transcript Pages 1 through 35 is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 1st day of July, 2014

LISA GREENWELL, Court Reporter
Bailey & Associates
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Suite 1700
Fort Lauderdale, Florida 33394

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE No. 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust
Agreement Dated May 20, 2008, As Amended,

Plaintiff,

-vs-

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON; PAMELA B. SIMON, Individually and as
Trustee f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, Individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of his minor
children D.B., Ja. B. and Jo. B.; JILL IANTONI,
Individually, as Trustee f/b/o J. I. under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her minor
child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,
Individually, as Trustee f/b/o Max Friedstein and C.F.,
under the Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of her minor child, C.F.,
Defendants.

HEARING BEFORE THE HONORABLE
MARTIN H. COLIN

Monday, September 15, 2014
Palm Beach County Courthouse
Delray Beach, Florida 33444
9:57 a.m. - 11:14 a.m.

Stenographically Reported By:

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1 Jeana Kim, CRR, RMR, FPR, CLR
2 Certified Realtime Reporter
3 U.S. Legal Support, Inc.
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1 **APPEARANCES:**
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23 **ALSO PRESENT:**
24 Ted Bernstein
25 Donna Bernstein

4

1 P R O C E E D I N G S
2 - - -
3 THE COURT: All right. So, good morning.
4 We're here on Case No. 2012CP004391.
5 Counsel and pro ses, make your appearances.
6 MR. ROSE: Good morning, Your Honor. Alan
7 Rose on behalf of Ted S. Bernstein, successor
8 trustee.
9 MR. BERNSTEIN: Good morning, Your Honor.
10 Eliot Bernstein, pro se.
11 THE COURT: All right. So we're here on --
12 MR. ROSE: Your Honor, one minute --
13 THE COURT: -- a for motion for contempt; is
14 that correct?
15 MS. FOGLIETTA: Judge, Joy Foglietta on behalf
16 of Brian O'Connell, personal representative.
17 THE COURT: Okay.
18 MR. ROSE: Yes, sir.
19 THE COURT: But I see that Eliot filed an
20 urgent motion to schedule for medical reasons, et
21 cetera.
22 What's going on with that, Eliot?
23 MR. BERNSTEIN: (Indicating).
24 THE COURT: Okay.
25 MR. BERNSTEIN: So I'm going to be speaking

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1 with nine spikes of titanium nails cutting me out.
2 But he wouldn't -- this is the most important
3 hearing in the world, so I'm here. Let's go.
4 THE COURT: All right. Okay. I have -- let
5 me address one thing. I appreciate that you did
6 something different this time, and I'm not sure it
7 was intentional, but if it was, good for you. You
8 changed the style of your pleading from "emergency"
9 to "urgent." Was that intentional?
10 MR. BERNSTEIN: I don't like to call an
11 emergency unless there is an emergency.
12 THE COURT: So that was good, meaning -- but
13 here's the problem. I'm going to ask you to just
14 be aware of this. It doesn't take a whole lot to
15 let me know if someone needs something rescheduled,
16 okay? The filing in this case was 331 pages.
17 MR. BERNSTEIN: That was the evidence added to
18 it.
19 MR. ROSE: But see, that's what you're not
20 supposed to do.
21 MR. BERNSTEIN: Oh, okay.
22 THE COURT: So the clerk's file, they have to
23 take time to scan everything in. They have no
24 discretion if you give them something.
25 And so, for example, when I went to print out

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1 your pleading, I didn't pay attention to how long
2 it was at first, and then I saw it was 331 pages.
3 I had to --
4 MR. BERNSTEIN: Can I not put exhibits in?
5 THE COURT: What?
6 MR. BERNSTEIN: Can I not put exhibits in?
7 THE COURT: Yeah, you don't put -- in a
8 motion, you don't put your evidence in.
9 MR. BERNSTEIN: For exhibits?
10 THE COURT: Yeah, you don't have to if it's an
11 exhibit. But a motion to continue, it doesn't --
12 it's almost beyond the realm of possibilities that
13 you'll have, for a motion to continue, based
14 upon -- if you have a medical reason, you say,
15 Judge, I have a medical reason; what exhibits do I
16 need other than maybe if you thought I needed a
17 verification that you had a medical procedure.
18 MR. BERNSTEIN: It was just that I had told
19 him a lot of times, so I put in all of the
20 correspondences.
21 THE COURT: That's unnecessary, okay?
22 MR. BERNSTEIN: Okay. I apologize.
23 THE COURT: I get it right away like that.
24 MR. BERNSTEIN: I apologize.
25 THE COURT: While we're here on the topic --

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1 so let's go over because I think I want to -- we
2 need to be able to do this for everyone's sake --
3 what it means to have to an emergency hearing in
4 probate, okay?
5 So we really don't have -- it's being drafted
6 now -- a specific administrative order that deals
7 exactly with that topic in probate itself. We have
8 it in civil and we have one in family. But now
9 we're drafting one.
10 But the general one is that it's a matter of
11 life and death, meaning that the clerk has to stop
12 what they're doing. If I'm in the middle of
13 someone else's hearing, I can't hear their matter.
14 I have to rule on the emergency right away because
15 if I don't rule in the next five minutes, someone
16 may die.
17 In a probate case, that's really unusual. I
18 checked around. No one said it's ever happened in
19 the history of probate cases. So we don't really
20 get that.
21 In family, by example, when someone files a
22 motion for not necessarily an emergency hearing but
23 for relief and they say, the child is at the
24 airport boarding the plane to a country that
25 doesn't accept the Hate Convention, Homeland

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1 Security says you've got 15 minutes to stop,
2 otherwise, you'll never see the child again, that's
3 what that means.
4 So because -- and that's the reason why those
5 motions are getting denied, because they're not
6 emergencies.
7 However, we do allow you, if you want to --
8 this is for everybody -- to have a hearing, because
9 I rarely grant emergency relief without a hearing.
10 I mean, that has to be -- that means I'm doing an
11 ex-parte without the other side being heard. But
12 if you want a hearing and you want it to be done
13 sooner than later, whether it's because it's
14 important or because you're having trouble
15 scheduling, put the word "urgent," and then that
16 comes to me. And then I'll look at it and then
17 I'll be involved, which I'm now even more
18 accessible to scheduling because I now have the
19 computer on my desk. They actually gave me a new
20 one here, it's bigger, for scheduling purposes.
21 And the other -- because some of the filings
22 of emergency motions were 90 pages and 100 pages,
23 and the clerk just has to -- I mean, the system
24 just shuts down for everybody else. So it is what
25 it is.

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1 But now I think you've got the right button to
2 push. It will be the urgent button if you think
3 it's something that is more important than not.
4 And then I'll consider it and give you a hearing
5 sooner than later.
6 Now, in my division, I set things sooner
7 anyway. So you almost don't even need to go there.
8 If you think so, fine.
9 MR. BERNSTEIN: Can I say something?
10 THE COURT: Sure, if you want.
11 MR. BERNSTEIN: The emergency that I did file,
12 which I apologize to you in the pleading, was to
13 keep my kids in school and complete my parents'
14 wishes. Mr. Rose said he was going to schedule
15 something and bring it to you and, blah, and they
16 were turned away from school. And I was trying to
17 get in here as fast as I could --
18 THE COURT: I thought I entered the order on
19 that. And my comment, when I denied the emergency
20 hearing, was that I had already entered an order
21 directing payment and so --
22 MR. BERNSTEIN: He didn't pay it.
23 THE COURT: Well, but the order was entered.
24 I don't enter an order twice. Once I order it, it
25 means do it. So it meant pay the money for the

10

1 schooling. I'm pretty sure that's what the order
2 was.
3 But that's got resolved?
4 MR. BERNSTEIN: No. My kids got thrown out of
5 school on the day of school.
6 THE COURT: Are they back in school?
7 MR. BERNSTEIN: No. They had to go to new
8 schools. And we've been trying to get them in.
9 This is more of Mr. Rose's strategy of force and
10 aggression.
11 THE COURT: I'm not happy to hear that it
12 didn't work out well, but I'm not going to hear
13 that now. I will hear it --
14 MR. BERNSTEIN: Okay. Well, that was the
15 emergency. I'm sorry. We'll get to that later,
16 you're right. I agree with you, let's --
17 THE COURT: In the order, that the money get
18 paid because you folks agreed to that, so that
19 wasn't too hard for me.
20 MR. ROSE: For the record, Your Honor,
21 Mr. Bernstein refused to comply with the order. He
22 refused to sign the agreement that you read in open
23 court and, therefore, they did make the payment,
24 made only two days later; it was too late. But
25 that's not why we're here today.

11

1 Can I approach with what we're here for today?
2 THE COURT: Is this the motion --
3 MR. ROSE: There are four issues. I have a
4 short, just sort of a summary outline, if it
5 would -- I think it would just focus the Court on
6 where we're going today. It's very short issues.
7 These are four very short, narrow issues that are
8 essentially a motion to hold Eliot Bernstein in
9 contempt of court for violating your prior orders
10 and to compel him to comply with your prior orders
11 and with the rulings of civil procedure. They are
12 four very narrow issues.
13 The first one deals with the privileged
14 e-mail, which Your Honor had entered an order,
15 which is tab -- on my set up, it's Tab A. You
16 entered an order back on July 18th directing
17 certain things to be done because there was a
18 privileged e-mail that Mr. Bernstein received
19 inadvertently. We had a whole evidentiary hearing.
20 He has not appealed the order, so it's a final --
21 it's an order that's not appealable at this time.
22 He's continuing to use the materials that were in
23 the privileged e-mail, which you determined to be
24 privileged, which he hasn't appealed.
25 And I've given Your Honor and Mr. Bernstein

12

1 this morning three examples of the many examples.
2 That would be -- I gave a package to you earlier.
3 If you flip through, one of these is a complaint.
4 The second of the examples --
5 THE COURT: That's in this packet?
6 MR. ROSE: Yes, sir, the second example. It's
7 a complaint. Actually, it's the last one,
8 probably, if they're in the same order as mine.
9 THE COURT: Well, this is opening. So that's
10 one, a purported violation of the July 18th order.
11 MR. ROSE: Correct. He's basically
12 republished your order in a complaint that he filed
13 against me and 92 other people and 5,000 John Does
14 in unrelated cases of Oppenheimer. But he's
15 republished your e-mail verbatim, incorporated it
16 by reference. And there are numerous other --
17 THE COURT: My e-mail?
18 MR. ROSE: No, I'm sorry.
19 THE COURT: You said my e-mail.
20 MR. ROSE: My e-mail. He's republished the
21 e-mail from Ted Bernstein to me in violation of
22 your order. There are three or four other examples
23 among other examples.
24 The three issues are very narrow. You've
25 ordered him to appear for deposition, and he

13

1 refuses to give me a date, not because of medical
2 reasons but because of his view that I should be
3 disqualified or removed or Ted should be removed or
4 other things. He's already lost a motion to
5 disqualify me, but he refuses to appear for
6 deposition or --
7 THE COURT: That's the 19th order?
8 MR. ROSE: Correct.
9 THE COURT: What's next?
10 MR. ROSE: Production. The same thing, he
11 won't produce any documents to me because he
12 doesn't recognize the validity of my existence in
13 this case.
14 THE COURT: Where is that?
15 MR. ROSE: That's the production request and
16 his objections to our discovery. He objected to
17 every discovery on the grounds that --
18 THE COURT: Can I see the production request
19 and his objections?
20 And are you saying that I already ruled on
21 that?
22 MR. ROSE: No.
23 THE COURT: So that can't be contempt,
24 correct?
25 MR. ROSE: Right, that's just to -- for the

14

1 purposes of today, I can withdraw that and come
2 back on the production on a different day, Your
3 Honor. That's easy.
4 The fourth thing is very important, though,
5 which is e-mail and e-service rules. There are
6 rules. Rule 2.516 of the Rules of Judicial
7 Administration and Rule 1.080 of the Rules of Civil
8 Procedure, you're only allowed, when you have the
9 privilege of using e-mail service, to serve the
10 people who the lawyers designate to be served. I
11 could designate him to serve anybody I want in the
12 world along with one or two secondary e-mail
13 addresses. But that's the only e-mail he can
14 serve.
15 If you look at this table, he has served every
16 single one of these papers on every single person
17 in my law firm. Every legal assistant, every
18 secretary, every lawyer, the bookkeeper, the people
19 that are in my second office. If you can imagine
20 getting hundreds of e-mails from Eliot Bernstein
21 with stacks and stacks of paper, how disruptive
22 that is, and it violates the rules.
23 This is what he served on Friday. And on
24 Saturday and on Sunday -- or on Sunday and Monday,
25 I got 538 more pages twice. And he's sending it to

15

1 every single person in my law firm. That violates
2 the rules.
3 So those are the three issues we're here for
4 today. I think they're simple and straightforward.
5 THE COURT: Stop. So under the contempt
6 rules, Eliot, the way we do this is -- I'll take
7 this one at a time. Do you have in front of you
8 the order of July 18, 2014?
9 MR. BERNSTEIN: Yes, sir.
10 THE COURT: It's called -- so that one deals
11 with the prohibition against republishing the
12 e-mail that you received that Mr. Rose intended to
13 send to his client. And so this is civil contempt.
14 So paragraph 9 says what it says about that
15 order. They contend you violated the order by
16 continuing to publish that document.
17 So I need to ask you one of two things:
18 Either you agree that you did the act, and then
19 you're allowed to be heard on why or why not you
20 should be held in contempt, or you can challenge
21 whether you did it and make them prove it.
22 MR. BERNSTEIN: Okay.
23 THE COURT: Which one do you want to do?
24 MR. BERNSTEIN: I'll challenge it.
25 THE COURT: Okay. The next thing they want to

16

1 say is that you're not agreeing to sit for
2 deposition, notwithstanding the order of June 19th.
3 Is that an issue or not?
4 And he says it's because you don't recognize
5 him as a person who can take it, but I ordered it.
6 MR. BERNSTEIN: I challenge that.
7 THE COURT: You challenge that? Have you sat
8 for a deposition already?
9 MR. BERNSTEIN: No.
10 THE COURT: And then the last one is the
11 nature by which you're serving papers pursuant
12 to --
13 MR. BERNSTEIN: Challenge.
14 THE COURT: You saying you're serving in
15 compliance with the rules?
16 MR. BERNSTEIN: Correct.
17 THE COURT: Your first witness?
18 MR. ROSE: Mr. Eliot Bernstein.
19 THE COURT: Come on up.
20 Proceed.
21 - - -
22 Thereupon,
23 (ELIOT BERNSTEIN)
24 having been first duly sworn or affirmed, was examined
25 and testified as follows:

17

1 THE WITNESS: Absolutely.
2 THE COURT: Go ahead.
3 DIRECT EXAMINATION
4 BY MR. ROSE:
5 **Q. Did I hand you these three documents outside**
6 **of court today?**
7 A. I believe so.
8 **Q. I'd like you to take a look at the three**
9 **exhibits. The first one that we're going to look at --**
10 **I'll make it easy.**
11 MR. ROSE: Do you want me to mark this as
12 Exhibit 1?
13 THE COURT: Whatever you want.
14 (Petitioner's Exhibit No. 1 was marked for
15 identification.)
16 BY MR. ROSE:
17 **Q. I'm handing you what I've marked as**
18 **Petitioner's Exhibit 1, which is a countercomplaint that**
19 **you filed in the case called Eliot Bernstein versus**
20 **Oppenheimer & Company. Do you see that?**
21 A. Correct.
22 **Q. Did you file that paper?**
23 A. I believe so.
24 **Q. If you turn to the first green tab on the**
25 **side, paragraph 235 --**

18

1 A. Yes, sir.
2 **Q. Did you write that paragraph?**
3 A. I did.
4 **Q. And in that paragraph, you advised that**
5 **"Claims of privilege were levied in attempts to cover up**
6 **the documents that both threatens Eliot with**
7 **forcefulness and aggressiveness and displays a wide**
8 **variety of breaches of fiduciary duty in the estate."**
9 **Did you write that?**
10 A. I did.
11 **Q. And you don't believe that discloses the**
12 **substance of the e-mail that Ted sent to me?**
13 A. I don't believe that violates the Court's
14 order.
15 **Q. That wasn't my question.**
16 **Does that contain the substance of what was in**
17 **the e-mail that there was threaten to forcefulness and**
18 **aggressiveness?**
19 A. No. That is a link to a website that somebody
20 else published.
21 **Q. And in the website, someone could find the**
22 **privileged e-mail?**
23 A. Possibly. I didn't publish it.
24 **Q. Do you believe --**
25 A. I believe parts are up there, but somebody has

19

1 already told you they did, correct?
2 **Q. Do you believe that somebody could find the**
3 **privileged e-mail by going to that e-mail --**
4 A. I believe the court order addresses that.
5 **Q. And if you go to --**
6 A. It said I shouldn't forward by e-mail the
7 letter. I haven't done that.
8 **Q. And then if you look at paragraph 236, "That**
9 **in keeping with the court order, you will not republish**
10 **the e-mail, but you will direct the Court to available**
11 **sites where it exists publicly and eternally in the**
12 **worldwide web."**
13 **Do you see that?**
14 A. Correct.
15 **Q. And then the last sentence of paragraph 236,**
16 **you incorporate by reference the privileged e-mail in**
17 **its entirety in this lawsuit that you filed?**
18 A. No. I put in a link to a website.
19 **Q. And then it says, "Incorporate by referencing**
20 **in entirety herein."**
21 A. Okay, yeah.
22 **Q. Correct?**
23 A. Yeah.
24 **Q. That would include what's in that website?**
25 A. Correct.

20

1 **Q. And you would agree the privileged e-mail is**
2 **at that website?**
3 A. I don't know, I said.
4 Have you checked it?
5 **Q. It's your testimony, sir. Are you telling the**
6 **Court you don't believe --**
7 A. I don't know if the whole e-mail is there or
8 what they published. I know those are links I was given
9 to that document.
10 **Q. And it's your testimony --**
11 A. And it's a whole blog on it, actually, on the
12 Ted Bernstein report.
13 (Petitioner's Exhibit No. 2 was marked for
14 identification.)
15 BY MR. ROSE:
16 **Q. If you look at what we'll mark as Exhibit 2 --**
17 A. The order was that I not e-mail the document
18 to anybody or forward it. I didn't do any of that.
19 **Q. Exhibit No. 2 is an --**
20 A. Or republish the link of somebody else's.
21 **Q. Exhibit No. 2 is an e-mail dated**
22 **September 4th. Did you send this e-mail to me and**
23 **numerous other people?**
24 A. I did.
25 **Q. If you turn to the second page with a green**

1 **tab, did you write, "As the privileged letter revealed**
2 **and Ted's admissions" --**

3 THE COURT: Wait, wait. Where are you now?

4 THE WITNESS: The second page of the e-mail.

5 MR. ROSE: I'm on the e-mail from
6 September 4th. It should be the three things in
7 the package with the green tabs. I'm sorry, Your
8 Honor, we switched to a different document.

9 THE COURT: All right. I see September 4th
10 e-mail from Eliot to Alan. Okay, got it.

11 MR. ROSE: And numerous other people.

12 BY MR. ROSE:

13 **Q. So page 2, did you write, "As the privileged**
14 **letter revealed and Ted's admissions on the stand**
15 **reflect, you and Ted have engaged in legal strategy**
16 **against of 'force and aggression.'"**

17 **Do you see that?**

18 A. Yes, I do.

19 (Petitioner's Exhibit No. 3 was marked for
20 identification.)

21 BY MR. ROSE:

22 **Q. And the third document, which is marked as**
23 **Exhibit 3, is a motion in opposition, which you filed in**
24 **the Shirley Bernstein estate. Can you identify that --**

25 A. The one where is John Pankowski (phonetic)

1 fired?

2 THE COURT: I missed the question.

3 THE WITNESS: So did I.

4 THE COURT: Slow down.

5 MR. ROSE: I'm onto the next exhibit.

6 THE COURT: Okay. Go ahead.

7 BY MR. ROSE:

8 **Q. Exhibit No. 3 is the motion in opposition.**
9 **Did you file that document in the courthouse on**
10 **August 28th of this year?**

11 THE COURT: Do I have that?

12 MR. ROSE: It's the third -- the three things
13 that I --

14 THE WITNESS: Yes.

15 THE COURT: One, two.

16 THE WITNESS: Yes.

17 MR. ROSE: I have an extra copy, Your Honor.

18 THE WITNESS: You probably have it in your
19 computer.

20 MR. ROSE: This would be Exhibit 3, Your
21 Honor. I apologize.

22 THE COURT: Okay. So this is called, in the
23 Shirley Bernstein Estate, a motion in opposition,
24 et cetera.

25 Go ahead.

1 BY MR. ROSE:

2 **Q. If you go to page 4, there is a tab, another**
3 **green tab, that should be on the side. If it's not --**

4 A. No.

5 **Q. Paragraph 5, "That Alan attempted to smear,**
6 **harass, defame and -- Eliot, et cetera, according to the**
7 **alleged trustee, Theodore, under oath in these" --**

8 THE COURT: Slow down.

9 MR. ROSE: I'm sorry.

10 BY MR. ROSE:

11 **Q. -- "of forcefulness and aggression in dealing**
12 **with Eliot. This strategy was also stated and detailed**
13 **in an e-mail sent to Eliot by Theodore that contained a**
14 **letter Theodore wrote to Alan, a claim they intended on**
15 **using this strategy of force and aggression on Eliot and**
16 **all those who are helping him, too."**

17 **Did you write that?**

18 A. Yeah.

19 **Q. Are there numerous other places in which you**
20 **have referenced the forcefulness and aggression and the**
21 **facts that came out --**

22 A. Yep.

23 **Q. -- the e-mail?**

24 A. Yeah. I think all over the place.

25 **Q. Next, do you serve every single piece of paper**

1 **in this case on every single person in my law firm that**
2 **you know their e-mail address?**

3 A. I've been serving --

4 THE COURT: Listen to his question.

5 THE WITNESS: I am. I've been serving the
6 people that I listed as respondents in these
7 matters, and as counter defendants. And I've asked
8 Alan Rose repeatedly to give me their attorneys so
9 I could contact them, but he has refused, God
10 knows, 10, 15 requests for who their lawyers are
11 that are representing them so I could properly
12 serve the lawyers. But since he refuses to give me
13 that information, yes, I've been serving the people
14 at his law firm that I am suing.

15 BY MR. ROSE:

16 **Q. Do you serve the bookkeeper at a law firm with**
17 **every piece of paper --**

18 A. It says all employees, everything. So yeah, I
19 make a -- yeah, I am suing her.

20 **Q. And do you serve every piece of paper on**
21 **everyone in all of the offices of our law firm?**

22 A. I've served you, the marshal served you or
23 somebody, right? Did they, yes or?

24 MR. ROSE: Mr. Bernstein, answer the question.

25 THE WITNESS: Well, I was just --

25

1 THE COURT: No. No.
2 THE WITNESS: Did I serve -- yeah, I served --
3 until you tell me who their lawyers are, I'm going
4 to keep serving to people I'm supposed to. They're
5 on the service list.
6 BY MR. ROSE:
7 **Q. Do you serve every single receptionist in both**
8 **offices?**
9 A. I served people at your office that I'm suing.
10 **Q. Well, are you going to continue to do it?**
11 A. Unless I'm ordered not to, I have to. I'm
12 serving documents that are respondents and defendants.
13 You won't give me their lawyers.
14 Who is you representing you, for example?
15 **Q. Have you served process on the receptionist or**
16 **the secretary or the associates or the legal assistants?**
17 A. Not yet. I asked you to waive it, but you
18 refused to waive yours in your own lawsuit. And you're
19 making this expensive in trying, but yeah.
20 And if they have lawyers, I'm more than happy
21 to serve their lawyers. I've asked you 100 times.
22 **Q. Have you cooperated in scheduling a date for**
23 **your deposition?**
24 A. Yes.
25 **Q. Do you believe I have the right to take your**

26

1 **deposition?**
2 A. Absolutely. If you served -- if -- yes, I do,
3 at this point.
4 **Q. Do you recall the Court ordering that I'm**
5 **entitled to take your deposition prior to the hearing on**
6 **your pending motions and petitions including the**
7 **petitions to remove Ted?**
8 A. Yes. But I had no hearing scheduled until
9 last week. So the 30 times you tried to schedule a
10 deposition were all abusive and harassment, and there
11 was no upcoming hearing. And I told you I was in
12 medical procedures that are causing me tremendous
13 headaches. I'm on medicines, I'm on heavy narcotic.
14 THE WITNESS: Your Honor, would you like to
15 see the list I'm on since their July hearing? I
16 brought it with me today for you. It's the Publix
17 receipts.
18 THE COURT: I don't need to see the receipts.
19 You just told me about it.
20 THE WITNESS: Well, you can see I don't have
21 teeth and I have a broken face where all my bones
22 were shattered. When the teeth are out, I have
23 extreme headaches that a mortal man wouldn't be
24 here.
25 THE COURT: All right. Let's focus.

27

1 THE WITNESS: I'm sorry. Yeah, I'm sorry.
2 BY MR. ROSE:
3 **Q. Did I call you a week ago to try to schedule a**
4 **hearing on September 24th, and you advised me you were**
5 **unavailable that day?**
6 A. I did.
7 **Q. Did you then call me a couple of days later**
8 **and advise that the Court had three hours available on**
9 **September 24th, and you were now available and wanted to**
10 **have your hearings heard on that day?**
11 A. Well, what happened was you were harassing me
12 to all of these -- trying to schedule all of these
13 hearings you canceled and depositions you canceled that
14 you never even notified me about. So I called the Court
15 to find out when we could have the thing that Martin
16 Colin, Honorable Martin Colin, wanted to hear next,
17 which was the removal of Ted.
18 And since you were trying to schedule all of
19 these things, I called to get it done quickly because we
20 have evidence that assets are now missing and that
21 you've told the Court one thing, which we'll hear on my
22 contempt proceeding against you next at -- that now we
23 have deposition statement that say you sold furniture --
24 THE COURT: Okay.
25 THE WITNESS: -- that you said transferred

28

1 before.
2 THE COURT: You're way beyond the scope of the
3 question.
4 THE WITNESS: I'm sorry.
5 MR. ROSE: Nothing further.
6 THE COURT: So before you respond, I have a
7 question --
8 MR. ROSE: I did forget one other aspect.
9 THE COURT: Sure.
10 BY MR. ROSE:
11 **Q. Did you tell us that you sent the e-mail,**
12 **privileged e-mail, to 2,000 people between the time you**
13 **received it on a Thursday evening and the following**
14 **morning when we were in front of Judge Colin?**
15 A. No. What I said was that I had sent the
16 e-mail to many of the people who were named in there to
17 be abused by you guys. And then what happened was I
18 believed I posted it on social media, where just like on
19 Facebook I have like 4,000 friends, let alone all of the
20 other places I'm socially connected, which is
21 everywhere. That's everywhere.
22 So I believe that thousands of people have
23 that information. And in fact, I'm certain quite a lot
24 of them do. And I posted things for everybody to delete
25 it, but I'm not exactly sure how that works on Facebook

1 and Instagram and everywhere else. But, okay.
2 **Q. Do you recall testifying on May 23rd that you**
3 **sent it to your friends who are lawyers, you sent it to**
4 **a number of people; you got so busy sending it to people**
5 **because it scared you that by the time you were done**
6 **sending it to people, your wife stopped you and said it**
7 **was time to go to court?**

8 A. I do recall that.

9 **Q. That would mean from 10:00 at night until the**
10 **morning when it was time to come to court, you were**
11 **sending the e-mail to people?**

12 A. Who said I started at 10:00 in the morning --
13 10:00 at night?

14 **Q. Well, you got Ted's e-mail, and then about**
15 **less than an hour, you got my e-mail telling you not to**
16 **send it to the people.**

17 **Had you sent it to anybody --**

18 A. -- until the next morning when I got up.

19 **Q. How many people have you advised --**

20 A. Every single person I sent an e-mail, and I've
21 given you and the Court copies -- and I regret that you
22 continue to try to mislead the Court -- that I have been
23 provided the e-mails that I sent and telling those
24 people to delete and destroy.

25 **Q. Well, there are about four people that you**

1 **sent e-mails that you provided as part of your --**

2 A. However many there were.

3 **Q. So how does four people equal 2,000 people?**

4 A. I just told you, on Facebook, when you post
5 something, there are thousands of people that can access
6 that publication.

7 **Q. And did you remove everything from Facebook?**

8 A. I think. It's kind of hard to know. I posted
9 people to delete it.

10 **Q. Did you tell people that they could -- they**
11 **should decide for themselves what to do with it because**
12 **you were going to appeal it?**

13 A. No. What I told them to do, if you read the
14 letter, is to delete it. I gave them the Judge's order.
15 I complied fully 100 percent with Judge Colin's order.
16 I told them to delete it, blah.

17 Then I said, because Judge Colin's order is
18 confusing, it says, "If Eliot appeals, he should,"
19 whatever.

20 So I said to everybody, I'm not a lawyer, but
21 I'm appealing this. So in the interim, I don't know
22 what you do with your copies; contact a lawyer. But you
23 misquoted and took out that little one tiny section and
24 left the two other ends off.

25 **Q. You told me --**

1 A. -- misread to some other kind of statement,
2 which is more of what's going on here, but okay. We'll
3 get to my turn next.

4 **Q. You told the people, "I'm not sure what you're**
5 **supposed to do in the meantime with your copies,"**
6 **correct?**

7 A. I told them that pending the appeal, they
8 should consult with a lawyer; that I'm not sure what to
9 do on appeal. I looked up the rules, but I'm not a
10 lawyer, and it doesn't say much about the appeal. And
11 Judge Colin's order didn't say anything about Eliot. So
12 I told them to seek legal counsel, which I thought was
13 what they should do. You knew that people were
14 objecting to destroying it.

15 **Q. Did you appeal the order?**

16 A. I haven't yet.

17 **Q. Did you advise the people after your deadline**
18 **to appeal a file [sic] that you were no longer appealing**
19 **it, and they should delete all copies and return them**
20 **and destroy them as Judge Colin ordered you to do? It's**
21 **a yes or no.**

22 A. I've already advised them to delete the e-mail
23 and what to do, and gave them the rules and gave them
24 Judge Colin's order. They're not, you know...

25 MR. ROSE: Nothing further.

1 THE COURT: Okay. So here's what I want to
2 do. Stay there, Eliot.

3 Do you have any other witnesses?

4 MR. ROSE: No.

5 THE COURT: You mentioned in opening statement
6 that there was a designation that you made -- this
7 is to Mr. Rose -- about who Mr. Bernstein should
8 serve by e-mail. I need to see that designation.

9 MR. ROSE: I'm not sure I have it. It's filed
10 with the Court. It's in the court record. It
11 would be -- let me look to see if I have a copy of
12 it.

13 MR. BERNSTEIN: Do we have it, Candy?

14 MR. ROSE: The designation only lists one
15 e-mail. It's mine only. I didn't list any
16 secondaries. And I have e-mailed it to
17 Mr. Bernstein, and he refuses.

18 Now, as a matter of law, he has no right to
19 serve somebody until they've been served with
20 process. So he can't send anything to anybody in
21 my law firm. By law, he can't --

22 THE COURT: I don't want you arguing that.

23 MR. ROSE: Sorry.

24 THE COURT: Let me do something. Let me get
25 the case back on the computer.

33

1 Do you know when you sent that e-mail
2 designation?
3 MR. ROSE: I think it was in -- I think it was
4 in like June or July, that time frame. I think --
5 THE COURT: Okay. Did you get --
6 Mr. Bernstein, Eliot, did you get the designation
7 by Mr. Rose as to who would receive e-mails?
8 MR. BERNSTEIN: No.
9 THE COURT: You don't have a copy of it?
10 MR. BERNSTEIN: No.
11 THE COURT: I'm talking to Mr. Rose now.
12 MR. ROSE: Let me see the e-mail.
13 MR. BERNSTEIN: And Your Honor, I've asked
14 them if he was going to be accepting service for
15 everybody.
16 THE COURT: Well, service is different. This
17 is now the issue of whether the e-mail rules are
18 being complied with.
19 MR. BERNSTEIN: Well, they're all respondents,
20 all those people.
21 THE COURT: But that's -- it may be different.
22 MR. BERNSTEIN: Tricky?
23 THE COURT: Hold on. I have to find this.
24 MR. ROSE: In point of fact, the rule is self
25 executing, Your Honor. What the rule says is if I

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1 haven't filed a designation, you're to serve me at
2 the e-mail address that I have listed with the
3 Florida Bar. But you're not to serve parties.
4 He continues to serve all these that are
5 represented by counsel. And there is no right to
6 serve anyone in my law firm other than me.
7 I'm having the document e-mailed to me.
8 THE COURT: You need to, because I'm just
9 having trouble --
10 MR. BERNSTEIN: They were all respondents in
11 this matter, if you look at them.
12 THE COURT: They may be, but if you're -- I'm
13 not talking about, right now, if I'm following
14 everybody, Mr. Bernstein's attempt to serve process
15 on someone named in a lawsuit. That's a different
16 subject, I think.
17 The question is, can you e-mail papers to
18 them?
19 And Mr. Rose, you're saying that he shouldn't
20 do it because he should only e-mail them to you.
21 Mr. Bernstein says, in response, that if he
22 e-mails something, he's not going to e-mail to
23 another party a pleading to you, Mr. Rose, because
24 you're not representing that party.
25 That's what you're saying, correct,

35

1 Mr. Bernstein?
2 MR. BERNSTEIN: Correct, sir.
3 THE COURT: But they're not served yet. So
4 the question is, can you start the e-mail process
5 in advance of them even being served because it's
6 the service of process that lets them know that
7 you're a party; otherwise, they tend --
8 MR. BERNSTEIN: But they're --
9 THE COURT: -- they don't know the lawsuit is
10 taking place that you filed.
11 MR. BERNSTEIN: I also ask them all to waive,
12 and these are lawyers and this is going to run up
13 huge expenses to me.
14 THE COURT: Well, I understand that.
15 MR. ROSE: Your Honor --
16 MR. BERNSTEIN: -- and they refused to waive.
17 THE COURT: Hold on.
18 MR. ROSE: It does raise a completely
19 different issue. What Mr. Bernstein -- Eliot
20 Bernstein is an experienced litigant. Even though
21 he's pro se, he's been litigating with people for
22 15 or 20 years as a pro se. So what he does is he
23 goes to the clerk's office without filing
24 anything --
25 MR. BERNSTEIN: I object.

36

1 THE COURT: Hold on.
2 MR. ROSE: -- and again, it's my name as a
3 respondent. If you look at the docket sheet, he
4 has the word "respondent" after my name.
5 THE COURT: To what pleading?
6 MR. ROSE: Just to the docket sheet. He goes
7 to the clerk's office, and somehow either he does
8 it or --
9 THE COURT: With every pleading, he serves --
10 MR. BERNSTEIN: I paid the clerk, which you
11 told me to pay to make them respondents. I paid \$3
12 for each respondent. They're all listed in the
13 Court that way. That's what was I advised to do.
14 THE COURT: The respondent is a person who is
15 the recipient of a petition filed by a petitioner,
16 who I assume is Mr. Bernstein, et cetera.
17 So if you're named a respondent, Mr. Rose,
18 then in the heading, that's what you're talking
19 about? You're a respondent in the heading?
20 MR. BERNSTEIN: No, sir.
21 MR. ROSE: I don't think it's -- I don't even
22 understand the point of it other than it's all
23 designed to --
24 THE COURT: Tell me what it physically looks
25 like, you're a respondent in the heading. Give me

1 an example. Show me.
 2 MR. BERNSTEIN: Individually and
 3 professionally.
 4 THE COURT: I see that. I see your name is
 5 there.
 6 MR. ROSE: It's not a procedure that's
 7 recognized by Florida law, but if you look on the
 8 docket sheet, he lists my name --
 9 THE COURT: I see, "Respondent Alan Ross,
 10 personally, and Alan Rose, professionally."
 11 MR. ROSE: I'm not a respondent in -- I'm a
 12 counsel of record for somebody. I'm under the --
 13 I'm serving as counsel in the case. And what he
 14 does is he adds the name "respondent," and then he
 15 says I'm a party.
 16 His whole goal is to get us to quit or step
 17 aside. He's already moved to disqualify us. It's
 18 not a legally recognized thing to just call someone
 19 a respondent.
 20 THE COURT: Why don't you dismiss --
 21 MR. BERNSTEIN: Respondent --
 22 THE COURT: -- yourself as a party if
 23 you're -- were you served with process?
 24 MR. ROSE: No.
 25 THE COURT: So --

1 MR. BERNSTEIN: You haven't been served with
 2 any process, Alan?
 3 THE COURT: No.
 4 If you're a named party in a lawsuit, then you
 5 would -- and you don't know why you're there or
 6 think you shouldn't be there, you need to move to
 7 dismiss yourself or strike yourself from that part
 8 of the pleading, and then I can consider doing
 9 that.
 10 MR. BERNSTEIN: And he is served --
 11 THE COURT: Stop. Stop.
 12 MR. ROSE: We're talking about two different
 13 things. He has now filed two counterclaims against
 14 me. We're going to deal with those another day.
 15 THE COURT: Okay.
 16 MR. ROSE: But in the estate proceeding, I'm
 17 not a party to the estate proceeding in any way,
 18 shape or form. There is no basis to make me a
 19 party to the estate proceeding.
 20 THE COURT: But --
 21 MR. BERNSTEIN: You were involved in the
 22 fraud, in the forgery --
 23 THE COURT: Slow down.
 24 MR. BERNSTEIN: -- advancing us.
 25 THE COURT: If he wants -- so here's the

1 question: Are you being joined as a party through
 2 a pleading filed by Mr. Bernstein?
 3 MR. ROSE: No.
 4 THE COURT: So Mr. Bernstein, listen
 5 carefully.
 6 MR. BERNSTEIN: I didn't hear that. I'm so
 7 sorry. I was peeling --
 8 THE COURT: There is an estate case open --
 9 MR. BERNSTEIN: -- my gums off.
 10 MR. ROSE: In the Shirley Bernstein and the
 11 Simon Bernstein Estate.
 12 THE COURT: I'm looking at Simon right now,
 13 which is 2012CP4391.
 14 MR. BERNSTEIN: Yes, sir.
 15 THE COURT: I see here that you have named as
 16 a respondent Mr. Rose, personally and
 17 professionally.
 18 MR. BERNSTEIN: Correct.
 19 THE COURT: So is there a pleading that you
 20 have filed or someone else has filed in which
 21 Mr. Rose is being sued in that capacity in this
 22 case?
 23 MR. BERNSTEIN: Yeah.
 24 THE COURT: What's that pleading?
 25 MR. BERNSTEIN: All of them, the petitions and

1 everything. I've listed him as a respondent and
 2 notified him.
 3 MR. ROSE: And when he is --
 4 THE COURT: You listed him as a respondent.
 5 MR. BERNSTEIN: But when he gets served --
 6 THE COURT: Slow down. In an estate case, the
 7 actions that get filed in this estate case are
 8 governed by the rules of procedure. They are -- if
 9 they're lawsuits, they're adversary proceedings.
 10 They're either mandatory or they're discretionary.
 11 You have to ask for permission and you have to have
 12 a special heading for them tacked onto the
 13 pleading. And I would have to see what the
 14 adversary pleading is that supposedly would bring
 15 Mr. Rose or any other attorney from the point of an
 16 attorney to being a named party.
 17 And I assume it's you who are the petitioners
 18 in that actions.
 19 MR. BERNSTEIN: Correct.
 20 THE COURT: And so I'm going to deal with
 21 that.
 22 MR. BERNSTEIN: And by the way, in Florida,
 23 when he accepts -- when he gets the petition served
 24 on him and accepts it at his e-mail address that's
 25 registered with the Court, he's accepted service of

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1 that document. He's a respondent. He could have
2 filed an opposition pleading, but he's refusing to
3 do that.
4 By the way, he's also been served process in
5 the counterclaim of his own lawsuit he filed
6 while I'm infirmed and he forced me to do all this
7 nonsense.
8 THE COURT: Hold on.
9 MR. BERNSTEIN: Anyways, he's now been served
10 by the marshal. And that's after he waives --
11 wouldn't waive service so I had to pay 2-, 3-,
12 \$400, whatever, that I don't have as you know
13 because of the frauds that have held up my
14 inheritance. But he's now served. And he should
15 have counsel on several things.
16 He's being accused of very serious crimes;
17 fraud, legal malpractice, breaches --
18 THE COURT: Those are not crimes. You're in
19 the wrong court if he's -- you don't serve someone
20 with crimes.
21 MR. BERNSTEIN: I've served civil fraud or the
22 counts --
23 THE COURT: Civil is different than --
24 MR. BERNSTEIN: Right, civil fraud --
25 THE COURT: Be careful about your wording.

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1 MR. BERNSTEIN: -- malpractice and about 100
2 other torts.
3 THE COURT: I see one now. Hold on. Hold on.
4 MR. BERNSTEIN: Have you notified your
5 counsel?
6 THE COURT: Mr. Bernstein, quiet.
7 MR. BERNSTEIN: I'm sorry.
8 THE COURT: Okay. So this is how I want you
9 to do it: I'm going to let you be heard, Eliot,
10 right now on the issue of compliance or not with my
11 July 18th order, of 2014, dealing with the
12 privileged letter or e-mail. Go ahead.
13 MR. BERNSTEIN: So I can call witnesses and
14 such?
15 THE COURT: Well, you can call witnesses in a
16 second, but I want you to finish your testimony
17 first because you're on the stand.
18 MR. BERNSTEIN: I'm confused.
19 THE COURT: So you're now able -- you can show
20 cause why you shouldn't be held in contempt, and
21 then you can call witnesses.
22 MR. BERNSTEIN: So I can start?
23 THE COURT: Right from there.
24 MR. BERNSTEIN: I have to get my stuff.
25 THE COURT: Go ahead.

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1 MR. BERNSTEIN: Thank you, sir.
2 Okay. The first --
3 THE COURT: Go back there. Take your stuff
4 and go back.
5 MR. BERNSTEIN: Okay, Your Honor. He says
6 that I didn't comply. Was that the first thing?
7 THE COURT: Yes.
8 MR. BERNSTEIN: In fact, I complied early,
9 before you ever told me. I went back. The first
10 time I learned of this privileged claim, you told
11 me to read the rules; I read them. I knew I had a
12 right to challenge, but I didn't want to, you know,
13 get in trouble. I didn't quite understand what
14 happened that day in court, so I notified everybody
15 I had sent the e-mail to. Here's the rules:
16 Destroy and delete, is what it says. And you have
17 to, you know, do what you think, talk to your
18 counsel.
19 After your ruling of privilege, your order
20 said send everybody a copy of your order, notify
21 them to destroy and delete, and I did all of that.
22 Would you like to see that evidence?
23 THE COURT: Show it to Mr. Rose first.
24 MR. BERNSTEIN: Okay. Did you get copies of
25 that? Just the first page there.

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1 THE COURT: He can look at the whole thing.
2 MR. BERNSTEIN: Oh, okay.
3 MR. ROSE: I've seen copies of certain of
4 these, but not all of them.
5 MR. BERNSTEIN: What does it say?
6 MR. ROSE: Here.
7 MR. BERNSTEIN: What does it say?
8 THE COURT: No, you're on the stand. You
9 can't ask him questions.
10 MR. BERNSTEIN: Not yet? I can call him in a
11 minute?
12 THE COURT: Right. Go back.
13 MR. BERNSTEIN: Do you have -- do you want to
14 see it?
15 THE COURT: Hand it to my bailiff.
16 MR. BERNSTEIN: It's two letters, Your Honor.
17 The first one is after your order. The first one
18 was long before your order just because I did the
19 right thing, according to what I thought was right.
20 THE COURT: Keep on going.
21 MR. BERNSTEIN: So I did notify everybody.
22 That's misstated in his petition. He's known about
23 that. He has copies of that. He's on the
24 distribution list.
25 I have submitted those to the Court as

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1 evidence that --

2 Do you have that, honey, that proof that --

3 THE COURT: Keep on going. Keep on

4 testifying.

5 MR. BERNSTEIN: Okay. If you look in your

6 docket, I submitted those letters to the Court as

7 proof, but yet Mr. Rose continues to try to set

8 this up that I didn't comply, that I did something

9 wrong. At the very bottom of it, you'll see that I

10 put in the note to everyone, I don't know what to

11 do pending appeal, check with your lawyer. That's

12 all I said. But I had already told everybody to

13 delete and destroy according to the Judge's order,

14 which is attached herein, which I attached therein.

15 I have similarly posted some things around

16 social media, but I don't know what effect that

17 had. I don't know who read what and passed it to

18 who. I'm so linked to this world in the Internet,

19 it's hard to imagine it isn't everywhere.

20 Okay. Do you want more time?

21 THE COURT: Whatever you want to tell me.

22 MR. BERNSTEIN: You're listening or reading?

23 THE COURT: Both.

24 MR. BERNSTEIN: What was the second thing you

25 wanted to know?

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1 THE COURT: No, I --

2 MR. BERNSTEIN: Oh, I didn't forward the

3 e-mail to anybody. Your order says don't forward

4 the e-mail. I didn't forward the e-mail. I didn't

5 publish the e-mail anywhere. I didn't republish it

6 inside any documents.

7 I did do what your order has nothing to do

8 with, which was tell people there are links that

9 has this information on the worldwide web. There

10 was nothing we could do about the fact that before

11 there was a privileged claim, it had already got to

12 reporters and others. And you know, the reporter

13 obviously is refusing. So your order says nothing

14 about even republishing it, to be quite honest.

15 But I didn't republish it. I pointed people

16 to blogs that contain lots of information,

17 including that one. I have no control over those.

18 THE COURT: What about you putting, though,

19 information about this letter in these lawsuits you

20 filed?

21 MR. BERNSTEIN: I didn't. I just put a link.

22 THE COURT: Well, okay.

23 MR. BERNSTEIN: Well, your order says don't

24 forward the e-mail to anybody. I didn't forward an

25 e-mail to anybody. I followed your order to the

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1 letter of the law.

2 If you want to rechange it and tell me I can't

3 speak of it -- Mr. Rose doesn't even want me to

4 speak; that even though my brother went on the

5 stand and said he had a strategy, they conspired of

6 force and aggression against me, to harass me.

7 THE COURT: Stop. Let me read this.

8 Okay, go on. Anything else on this issue

9 without repeating yourself?

10 MR. BERNSTEIN: Was there anything else you

11 wanted me to address?

12 THE COURT: On this -- so let's go to the

13 deposition.

14 MR. BERNSTEIN: Okay, the deposition. Your

15 order, again, states clearly that Eliot should do a

16 deposition before his next hearings.

17 THE COURT: So when are your next hearings?

18 MR. BERNSTEIN: Okay. Well, it was just

19 scheduled last week.

20 THE COURT: For when?

21 MR. BERNSTEIN: Mr. Rose --

22 For September 24th.

23 THE COURT: Is that accurate?

24 MR. ROSE: Yes.

25 MR. BERNSTEIN: Okay. So --

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1 THE COURT: All right. Slow down. So --

2 MR. BERNSTEIN: Yes, sir.

3 THE COURT: So here's what we're doing: When

4 do you want to take his deposition?

5 MR. BERNSTEIN: Your Honor, could I ask a

6 question?

7 THE COURT: No. Let me first get that.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Does it have to do with that

10 issue?

11 MR. BERNSTEIN: It does.

12 MR. ROSE: We have --

13 MR. BERNSTEIN: No, let him go on.

14 MR. ROSE: We have other hearings this

15 Thursday. I could take it after those hearings.

16 THE COURT: This Thursday, I saw in the

17 calendar there is something for this Thursday, but

18 I'm not sure. It looks like it's a petition for

19 discharge?

20 MR. ROSE: Of Ben Brown.

21 THE COURT: Of Ben Brown, okay. I didn't get

22 that detail on there.

23 Okay. So that's not one of the hearings

24 that's referred to in the June 19th order?

25 MR. ROSE: Correct.

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1 THE COURT: All right. So the next hearing
2 dealing with Eliot's pending motion/petitions is
3 September 24th.
4 When do you want to take his deposition?
5 MR. ROSE: I could take it on the 18th right
6 after the hearing. We could do it in the
7 courthouse, if we can get a room.
8 MR. BERNSTEIN: I'll only be able to do it
9 telephonically. I'm medically --
10 THE COURT: Well, you're going to be here,
11 though, on the 18th.
12 MR. BERNSTEIN: I probably won't.
13 THE COURT: You're not going to be here for
14 then?
15 MR. BERNSTEIN: I shouldn't even be here now.
16 THE COURT: But who's filed the petition for
17 discharge?
18 MR. BERNSTEIN: Ben Brown.
19 THE COURT: He's a curator?
20 MR. BERNSTEIN: Yeah.
21 THE COURT: And he wants to be discharged?
22 MR. BERNSTEIN: Correct.
23 THE COURT: Does anyone oppose that?
24 MR. BERNSTEIN: I think the creditors.
25 THE COURT: So you're not going to be here for

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1 then?
2 MR. BERNSTEIN: Okay. Can I ask a question?
3 THE COURT: No, no. So here's the way this is
4 going to work, this is really simple. The order
5 that I entered on June 19th says what it says.
6 That usually is instructive enough not to cause a
7 problem, but that doesn't work in this case.
8 So are you agreeing that he can appear by
9 phone? If it's yes, it's yes. If it's no, I'll do
10 something else.
11 MR. ROSE: I'd prefer -- we're all in Boca.
12 It's not at a distance. It's very difficult to
13 take a telephone deposition.
14 THE COURT: So this is the way it works. And
15 we're dealing with this today so you're not leaving
16 the courthouse without this. You have hearings on,
17 what I'll call, Eliot's pending motions. They are
18 what they are.
19 They have a right to take your deposition in
20 person before those hearings. The hearings are set
21 for the 24th. If you want those hearings still on
22 the 24th, you have to sit for your deposition. If
23 you can't sit for the deposition for medical or
24 other reasons --
25 MR. BERNSTEIN: Well --

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1 THE COURT: Hold on -- then I have to move
2 both.
3 MR. BERNSTEIN: The hearings?
4 THE COURT: And the deposition.
5 MR. BERNSTEIN: Okay. I did want them later.
6 It's just that we have serious problems.
7 THE COURT: This is scheduling --
8 MR. BERNSTEIN: There is one more thing. No
9 I get that. I'm more than happy to schedule, even
10 though I don't feel well and it's wrong.
11 The bottom line is, up till last week,
12 Mr. Rose has scheduled depositions without my
13 knowledge, without my consent, filed, wasted the
14 Court's time, money, the State's money, everybody,
15 to cancel it because it was bogus.
16 THE COURT: Let's --
17 MR. BERNSTEIN: Wait, wait, wait.
18 THE COURT: No, I want to get to --
19 MR. BERNSTEIN: This is very important.
20 THE COURT: I'm going to get to the --
21 MR. BERNSTEIN: Okay.
22 THE COURT: -- other issues in a little bit.
23 Let me deal with this.
24 MR. BERNSTEIN: Okay.
25 THE COURT: Are you going to be able to sit

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1 for your deposition between now and the 24th?
2 MR. BERNSTEIN: Sure.
3 THE COURT: Okay. So we can keep the --
4 MR. BERNSTEIN: Can we do --
5 THE COURT: Hold on. The answer is you want
6 to be able to keep the 24th hearing?
7 MR. BERNSTEIN: Yes.
8 THE COURT: So if you do that, you have to be
9 able to sit.
10 MR. BERNSTEIN: Can I --
11 THE COURT: Here's what I'm going to do. No,
12 I'm not going to barter with you folks with this
13 because time is important for this morning. Before
14 you leave, you're going to get a date that's
15 agreeable.
16 MR. BERNSTEIN: Can I make a statement?
17 THE COURT: Yes.
18 MR. BERNSTEIN: I am on heavy medication.
19 THE COURT: That's why I'm --
20 MR. BERNSTEIN: Wait. Here. Right.
21 THE COURT: -- giving you a chance to --
22 MR. BERNSTEIN: That's exactly right. And I
23 am going to get off it for the hearing to be a
24 little bit cognizant. And so I would like to take
25 the deposition, since I am going through procedures

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1 right up to that point, the day before or so
2 because that's appropriate.
3 THE COURT: Well, the only problem with that
4 is if you get it the day before and they want to be
5 able to use your deposition at the hearing --
6 MR. BERNSTEIN: Okay, two days before?
7 THE COURT: -- expedite it, it's a real
8 expensive procedure.
9 MR. BERNSTEIN: They did that with Don Tescher
10 (phonetic) and wasted all our money.
11 THE COURT: Well, I'm just --
12 MR. BERNSTEIN: So I'm just saying I have a
13 medical reason to do it this way.
14 THE COURT: Can you take it two days before?
15 MR. BERNSTEIN: Otherwise, they're putting me
16 on all the narcotics --
17 THE COURT: Is that better for you? Hold on.
18 Let's look at your schedule. That's a Monday
19 because the hearing is on a Wednesday.
20 MR. ROSE: I'll take it Monday, and I'll
21 decide -- we start early Monday and do it --
22 THE COURT: Let's do this right now. Pick the
23 time and the place.
24 MR. ROSE: 9:00 a.m. We had to pick the court
25 reporter that was somewhere in Boca Raton,

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1 central --
2 THE COURT: Pick it now. Do you want to do it
3 at the court reporter's office?
4 MR. ROSE: We noticed it at the court reporter
5 that is behind One Boca Place on Glades, somewhere
6 near between Glades and Military.
7 THE COURT: Do you know where he's talking
8 about?
9 MR. BERNSTEIN: My wife probably knows.
10 THE COURT: Do you know where he's talking
11 about?
12 MS. BERNSTEIN: Yes, but can we not make it
13 9:00? Can we make it closer to 10:30, 11:00
14 because we have kids at school that start at 9:00.
15 THE COURT: Well, I want him to finish. I
16 don't want it to get postponed.
17 MR. ROSE: I would do it in this building if
18 we --
19 THE COURT: I don't think we do -- we used to,
20 but they don't do that anymore.
21 MS. BERNSTEIN: Where was the location again?
22 MR. BERNSTEIN: Call us with the location.
23 We're pretty amenable.
24 THE COURT: This is going to go in the form of
25 an order, that's why.

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1 So the 22nd. Start at 10:00, Mr. Rose --
2 MR. ROSE: Okay.
3 THE COURT: -- at the court reporter's office.
4 Have someone from your office, Mr. Rose, now get
5 the name of that reporter because I want it in the
6 order, and I'm going to serve it on both you and
7 Mr. Bernstein.
8 MR. ROSE: Okay.
9 THE COURT: And that will be your deposition.
10 And that deposition will concern the pending
11 matters that are being set for the 24th.
12 MR. BERNSTEIN: Only, correct?
13 THE COURT: You have tons of matters. So the
14 way it works is that's the scope of the order.
15 Mr. Bernstein, if you want to make an objection,
16 okay, you don't stop the deposition; that's the
17 rule. You make an objection for record, and then I
18 rule on the objection if they want to use the
19 deposition at a hearing. But there is no such
20 thing as canceling, walking out --
21 MR. BERNSTEIN: Protective order, I believe.
22 THE COURT: But you --
23 MR. BERNSTEIN: Move for that? Okay.
24 THE COURT: You move for that, and then you
25 continue the deposition.

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1 MR. BERNSTEIN: Okay.
2 THE COURT: Because here's the thing: You
3 want these hearings set --
4 MR. BERNSTEIN: I'm fine with the deposition,
5 Your Honor.
6 THE COURT: -- you get deposed.
7 MR. BERNSTEIN: I don't know why we need one.
8 I'm going to be here for the hearing. So he could
9 ask me the questions directly.
10 THE COURT: He wants to know in advance. So
11 he can do that.
12 MR. BERNSTEIN: God bless him.
13 THE COURT: So that takes care of that issue
14 here.
15 MR. BERNSTEIN: And is it limited in scope
16 just so that I might not understand --
17 THE COURT: -- to the matters that --
18 MR. BERNSTEIN: -- to removing Ted?
19 THE COURT: Or any other pending motions that
20 I'm hearing on the 24th.
21 MR. BERNSTEIN: Just the motion to remove Ted.
22 MR. ROSE: We have three hours reserved.
23 There are a number of other really important
24 matters that we could hear if there's time. Can we
25 set them for the same time, and if we don't have

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1 time --

2 MR. BERNSTEIN: No.

3 MR. ROSE: -- and if we do have time, we can

4 reach them?

5 THE COURT: Well, I don't know what those

6 matters are. And the problem is that -- I can give

7 you other hearing dates. If you want to have

8 another hearing date on one of your motions,

9 Mr. Rose, on Ted's side, I'll give you a hearing

10 right away. And I'll give you a hearing on that.

11 MR. ROSE: I'm running into the same issues

12 with the scheduling; they're not agree to schedule

13 them. We had times available --

14 THE COURT: All right. So then if you tell

15 me --

16 MR. BERNSTEIN: I need all that time.

17 THE COURT: When you want -- okay. So he has

18 his hearing date on the 24th. If you want another

19 date --

20 MR. ROSE: I'll schedule them separately.

21 THE COURT: No, this morning, when I'm in

22 another hearing. But you'll sit outside and

23 schedule. If you have a problem, you'll come back

24 in.

25 MR. BERNSTEIN: Can that be after my medical

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1 treatments? I've told him --

2 THE COURT: You could have the hearing, but

3 you'll schedule it -- you'll talk to him about when

4 you want it scheduled.

5 MR. BERNSTEIN: Okay. I've already told him

6 after the 10th.

7 THE COURT: It can't be sometime way down the

8 road.

9 MR. BERNSTEIN: I told him after the 10th, and

10 you're not even available till then anyway

11 according to Sherry.

12 THE COURT: So we'll work on that.

13 MR. BERNSTEIN: Okay.

14 THE COURT: So now, we've got to move this a

15 little bit. Let me go to the third issue, the

16 e-mail.

17 Okay. Mr. Bernstein?

18 MR. BERNSTEIN: Yes, sir?

19 THE COURT: Your list of respondents seem to

20 be growing, okay? As the pleadings continue,

21 they're getting longer and longer.

22 MR. BERNSTEIN: No, Your Honor.

23 THE COURT: They're not?

24 MR. BERNSTEIN: No.

25 THE COURT: I mean --

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1 MR. BERNSTEIN: It's been like that since

2 going back to time.

3 THE COURT: You have John and Jane Does 1

4 through 5,000.

5 MR. BERNSTEIN: Only if it ties into my

6 federal RICO --

7 THE COURT: But this is my case.

8 MR. BERNSTEIN: But it might jump into another

9 court.

10 THE COURT: And I saw recently, and I'm not

11 sure where the pleading was, but if it gets brought

12 to my attention that you put myself and Judge

13 French down in the heading of the case, or in a sub

14 heading of the case. You actually have us in the

15 pleadings.

16 MR. BERNSTEIN: As material and fact witnesses

17 possibly.

18 THE COURT: Yeah, but I mean, you can't just

19 do things like that unless --

20 MR. BERNSTEIN: I'm filing a countercomplaint

21 Your Honor. That's where it's at.

22 THE COURT: But you can't put a counter -- but

23 you haven't filed one, and you're putting us --

24 MR. BERNSTEIN: I have filed one.

25 THE COURT: But judges' names are being put in

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1 the heading of the case as a witness. Witnesses

2 don't go in headings.

3 MR. BERNSTEIN: Oh, I'll move it down then,

4 I'm sorry.

5 THE COURT: All right. We're not -- we're

6 judges. So we're trying to do this thing as

7 dignified as possible.

8 I think I have an order prepared to sua sponte

9 strike those paragraphs because you're not allowed

10 to do that. That violates significant rules to do

11 that. We're not witnesses --

12 MR. BERNSTEIN: Well --

13 THE COURT: We're not witnesses to events that

14 take place in the courtroom.

15 MR. BERNSTEIN: Well, these are --

16 THE COURT: No, no, I'm not going to argue

17 with you on that.

18 MR. BERNSTEIN: Oh, okay.

19 THE COURT: So you need --

20 MR. BERNSTEIN: So move it down?

21 THE COURT: No. You need to eliminate us from

22 the heading, and I'm striking I think it's

23 paragraphs 53 and 54 of that -- whatever that

24 lawsuit was that tries to say, as a pleading in the

25 case, that you want Judge French and I to be

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1 witnesses to different things that you say happened
2 improperly by others in our courtroom. That's not
3 a proper pleading. That violates civil rules, and
4 you're barking up the wrong tree when you start to
5 do that stuff. So I'm going to be striking that.
6 MR. BERNSTEIN: Okay.
7 THE COURT: I'm the judge, you're the party.
8 MR. BERNSTEIN: I got it.
9 THE COURT: Let's leave it that way.
10 MR. BERNSTEIN: I will. I respect that.
11 THE COURT: On the e-mail things, here's what
12 I'm hearing, and I want to make sure I understand
13 it. You have filed an action. It could be in the
14 form of a countercomplaint. And you're naming
15 individuals from Mr. Rose's office as parties. So
16 far true?
17 MR. BERNSTEIN: Yes, sir.
18 THE COURT: And you're trying to serve them as
19 parties?
20 MR. BERNSTEIN: Correct, sir.
21 THE COURT: Okay. And you haven't yet served
22 them, and no one has made --
23 MR. BERNSTEIN: I served Mr. Rose.
24 THE COURT: But you haven't served the
25 individuals --

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1 MR. BERNSTEIN: Well, I have at their e-mail
2 addresses that are --
3 THE COURT: Right, but I'm talking about
4 service now, because you're talking about process.
5 MR. BERNSTEIN: Oh, no. Exactly. I've asked
6 them to waive, and I'm trying to get that to save
7 us a few thousand dollars.
8 THE COURT: Pending serving these individuals,
9 who you want to name as party defendants or
10 respondents in your action, you're e-mailing things
11 to them; is that accurate?
12 MR. BERNSTEIN: Sure. The countercomplaints
13 and waiver of service saying, will you please waive
14 and --
15 THE COURT: Is that what you're getting?
16 MR. ROSE: That's not exactly true, Your
17 Honor. What's happening is, right now there are
18 four different things that -- in the Estate of
19 Shirley Bernstein, we aren't parties. There is no
20 claim made against us.
21 MR. BERNSTEIN: There is.
22 MR. ROSE: Other than me appearing in the
23 case, there's nothing to do -- and he's e-mailing
24 everything in the Shirley Bernstein to every
25 member, every person in my firm, including

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1 secretaries. Could you imagine suing General
2 Motors and e-mailing all of their 50,000 employees?
3 Number two, in the Simon Bernstein Estate,
4 we're not in that case. It has nothing to do with
5 it.
6 There are two other things he sued us, and he
7 sued me in the case called Oppenheimer, which is
8 pending before Your Honor. Now, in that case, I've
9 been served, but no one else has been served and no
10 one else is really named. He didn't name the
11 secretary. He didn't name those people.
12 And in this case, we filed a trust
13 construction case. One of the important issues we
14 want to have heard is my motion to sever his
15 counterclaim. Your Honor has already addressed his
16 counterclaim briefly by saying he joined you as
17 a --
18 MR. BERNSTEIN: Wait. You're defending in
19 that case, and you accepted service. So who are
20 you representing right now?
21 MR. ROSE: Your Honor --
22 MR. BERNSTEIN: Alan?
23 THE COURT: Stop.
24 MR. ROSE: In the counterclaim --
25 MR. BERNSTEIN: Well, he's talking a different

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1 case right now, Your Honor.
2 THE COURT: All right. Hold on.
3 MR. BERNSTEIN: And he's a defendant who has
4 been served in that case, his own lawsuit.
5 THE COURT: So here's what we're doing. I'm
6 going to case manage this a little bit better. So
7 let me just give you a rule that I'm going to rely
8 upon.
9 MR. BERNSTEIN: Your Honor, I have to ask
10 Alan --
11 THE COURT: Stop, stop. Stop for a second.
12 MR. BERNSTEIN: Okay.
13 THE COURT: So in the Rule 5s, which are the
14 probate rules, it has some really specific guidance
15 here.
16 So here's what we're doing from now on:
17 Whether it's in an estate case or in a trust case
18 that's filed before me, two things I want. This is
19 ordered that must happen from here on in. If there
20 is a desire on anyone to file an adversary
21 proceeding, which is anything other than the
22 ordinary administration of the estate or the trust,
23 okay, they must do the following first: They have
24 to set a hearing before the Court. They can
25 prepare the purported pleading. They bring the

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1 pleading, unfiled with the clerk, before me, and I
2 determine whether it's going to be allowed to be
3 filed with the clerk, and start the process under
4 the rule as an adversary proceeding. That's one.
5 That's Rule 5.025.
6 But I don't want -- I'm modifying the rule a
7 little bit because I don't even want it served in
8 clerk's office. The clerk is getting bombarded
9 here unnecessarily.
10 I'm going to look at the lawsuit, okay? I'm
11 going to see how it's styled, and then I'll
12 determine whether it meets the rules for an
13 adversary proceeding by the petitioner versus the
14 respondent in the particular case that's filed. So
15 I'll determine that. That's one.
16 MR. BERNSTEIN: Does that apply to the
17 counterclaim? I mean, I've been served --
18 THE COURT: Well, when --
19 MR. BERNSTEIN: -- and I have a time limit.
20 THE COURT: When you say you have, a
21 counterclaim, there's a complaint filed in what
22 case?
23 MR. BERNSTEIN: Two cases, Oppenheimer and
24 then Alan Rose sued me the other day in a -- and
25 served me, and I had an answer a counterclaim

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1 while I was not well.
2 THE COURT: The answer is yes. The answer is
3 yes, I want to see it. I want to see it all.
4 MR. BERNSTEIN: I filed that --
5 THE COURT: I want to see it all.
6 Now, the other rule -- and you're writing this
7 in the order, and so Mr. Bernstein gets it --
8 everybody needs to remember that there is a rule,
9 5.020. So your wife is now taking that number.
10 Let me read you something about what that rule
11 says. "When you plead something, the pleading,
12 called the petition, shall contain a short and
13 plain statement of the relief sought, short
14 statement of the grounds, and short statement of
15 the jurisdiction of the court." That's what goes
16 in a pleading, okay?
17 Is there a word that I've been repeating in
18 that last dialogue that should mean something to
19 everybody? What do you think the operative word
20 is?
21 MR. BERNSTEIN: Short.
22 THE COURT: Short. Short.
23 MR. BERNSTEIN: But there's a lot of crimes.
24 THE COURT: But it's designed to be a short
25 pleading.

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1 MR. BERNSTEIN: Okay, but I'm not a lawyer.
2 THE COURT: But Mr. Bernstein, there is no way
3 in any of these actions that 100 pages is a short
4 pleading. So you need to be able to have that in
5 mind. Understand you don't prove your case in your
6 pleading; it's a notice pleading.
7 If you look at, for example, the Supreme Court
8 forms, on a simple matter, which is there is an
9 action in county court that the Supreme Court gives
10 you the form on. If you loan someone \$100 and they
11 don't pay you back, here's what you write in the
12 lawsuit. You write, "I loaned John \$100. He
13 hasn't paid me back. I want a judgment for \$100."
14 You don't put, "I loaned John \$100. He's an
15 SOB. He's using it for this."
16 Maybe all of that stuff is true and maybe you
17 need to prove that at trial, but that's not how you
18 plead it. The Supreme Court gives examples of
19 lawsuits. They're all less than a page.
20 MR. BERNSTEIN: Your Honor --
21 THE COURT: So you may need more than a page,
22 but you're going to pay attention to that rule.
23 MR. BERNSTEIN: Can I ask you a question?
24 THE COURT: Not yet. I'm finishing my order.
25 MR. BERNSTEIN: Okay, no problem.

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1 THE COURT: So we're going to go ahead now and
2 modify all of the lawsuits to comply with this
3 order, okay?
4 So now that will take care of the -- I've
5 dealt with Item 2 and 3. Now let's go back to
6 No. 1.
7 MR. BERNSTEIN: Okay, Your Honor.
8 THE COURT: Hold on. I'm not done. I have to
9 finish my ruling. I have to get rid of you folks.
10 MR. BERNSTEIN: I'm not sure exactly what that
11 meant just now.
12 THE COURT: What?
13 MR. BERNSTEIN: Meaning I filed
14 countercomplaints. I'm serving them. I've got --
15 THE COURT: Well, you filed them already. I'm
16 not going to unfile them.
17 MR. BERNSTEIN: Oh, okay.
18 THE COURT: I want to see all of the things
19 that are pending. Don't file anything new in the
20 way of lawsuits, petitions, counterpetitions,
21 adversary proceedings without first bringing them
22 in here unfiled for me to review.
23 If you file them, don't do anything else on
24 them until you bring them before me so I can see
25 what they are. And make sure -- because you're

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1 talking about not wasting time, Mr. Bernstein, and
2 I agree with you there because time is money in
3 this business, to make sure that the matter is in
4 the right court, in the right case, and is going to
5 be able to go through the system the way it's
6 supposed to go as opposed to having to be bombarded
7 with motions that waste a lot of time and money.
8 So I'll review them.
9 MR. ROSE: My --
10 MR. BERNSTEIN: Your Honor --
11 THE COURT: Hold on.
12 MR. ROSE: What I would request the Court to
13 do is to stay my complaint and his counterclaim.
14 No one will have to be reserved. Everyone who has
15 already been served will be deemed to be served. But
16 stay them both until we have both filed --
17 MR. BERNSTEIN: Are you doing that as a
18 defendant?
19 THE COURT: He's saying stay his action
20 against --
21 MR. BERNSTEIN: He's been served --
22 THE COURT: Listen to me.
23 MR. BERNSTEIN: Okay.
24 THE COURT: I'm repeating what he said. He's
25 not saying just your side. He's saying both sides.

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1 MR. BERNSTEIN: I don't want my side to be
2 stayed.
3 THE COURT: I know, but I'm going to do that
4 because I want to see -- you know, we've got to get
5 a grasp. You know, Eliot --
6 MR. BERNSTEIN: I didn't sue him. He sued me.
7 I'm just responding within a legal time.
8 THE COURT: -- his suit against you and see if
9 I think it's proper as well.
10 MR. BERNSTEIN: Oh, okay. I thought you were
11 reading this stuff.
12 THE COURT: Listen to what I'm saying.
13 MR. BERNSTEIN: Okay.
14 THE COURT: So I'm going to look at all it of.
15 MR. ROSE: I'll enter the order saying staying
16 my case, both sides, until it's --
17 THE COURT: I've got to get done here.
18 MR. ROSE: Okay.
19 THE COURT: So the question is, is Eliot in
20 contempt of violation of the July 18th --
21 MR. BERNSTEIN: Do I get to put on my side of
22 this?
23 THE COURT: Not yet because --
24 MR. BERNSTEIN: How are we doing that
25 without --

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1 THE COURT: Because if you'll listen to me,
2 you'll hear it.
3 MR. BERNSTEIN: Okay.
4 THE COURT: So here's the problem: The e-mail
5 from Eliot seems like he did what 9A, B, and C did.
6 What I see he's done also is he puts reference to
7 that e-mail in the pleadings, correct?
8 MR. ROSE: Correct.
9 THE COURT: And that's what I want to be able
10 to see because here's the -- so technically, Eliot,
11 you're correct that I didn't put in my e-mail not
12 to publish anything about that communication in
13 other media --
14 MR. BERNSTEIN: I didn't publish that.
15 THE COURT: No, no. Publishing meaning
16 referred to it in your pleadings, which you did. I
17 read it.
18 MR. BERNSTEIN: No, that I agree, right.
19 THE COURT: So I didn't -- because it's not
20 always easy to think about, when I style an order
21 like this, every possible way someone might stretch
22 this rule.
23 So I'm going to -- here's my ruling: I'm
24 deferring on the contempt ruling on violation of
25 the July 18th order. But I'm going to take up

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1 through what would be at the next hearing that we
2 have on this matter, a consideration of a motion to
3 strike those allegations that you say violate the
4 intent of the privileged communication law. And I
5 may have to remove them, okay? And that's the idea
6 here. So we're going to have to kind of cleanse
7 it, okay, a little bit to do this the right way.
8 But now, Eliot, one final word. That's my
9 ruling. I don't need any other evidence. You can
10 have a seat. Go ahead.
11 MR. ROSE: Your Honor --
12 MR. BERNSTEIN: Do I get --
13 THE COURT: No, because I'm done.
14 MR. BERNSTEIN: But I've got a side that
15 hasn't been --
16 THE COURT: I didn't hold you in contempt. Do
17 you want me to consider your side and reconsider?
18 MR. BERNSTEIN: Yeah.
19 THE COURT: I didn't hold you in contempt.
20 MR. BERNSTEIN: No, I know, but I've got a
21 counter to this that I want to ask him some
22 questions. I just want to put him on the stand.
23 THE COURT: A counter to what?
24 MR. BERNSTEIN: Well, I don't think this
25 was -- this filing was contempt. I think it was

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1 harassment, it was frivolous --
2 THE COURT: It's a proper way of doing it.
3 MR. BERNSTEIN: Well, my question is this,
4 Your Honor.
5 THE COURT: What?
6 MR. BERNSTEIN: Ted Bernstein, why is this
7 happening in the Estate of Simon, meaning there was
8 a privileged letter that my brother sent me some
9 letter that wasn't a lawyer. You knew the whole
10 story. Why is this in the Estate of Simon? Why
11 has Alan Rose chose to file this --
12 THE COURT: This order I entered is in the
13 Estate of Simon's case.
14 MR. BERNSTEIN: I know, but he has no right to
15 be filing it in the Estate. But you already
16 ordered a curator --
17 THE COURT: If I entered an order, if I
18 entered an order in the case --
19 MR. BERNSTEIN: I know, but why are we hearing
20 this here? Alan Rose is bringing things into the
21 estate where we already have a curator and a PR
22 now.
23 THE COURT: Right, but he's --
24 MR. BERNSTEIN: Why he is conducting this
25 hearing --

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1 THE COURT: I understand that. He's
2 conducting it because he -- "he," Mr. Rose -- is
3 allowed to go forward on matters even though the
4 PR, who I think is Mr. O'Connell -- and I forgot
5 who we had for him -- hasn't done that. So these
6 are --
7 I've looked at your motion. He wants to
8 schedule your deposition. He has a right to be
9 able to do that.
10 MR. BERNSTEIN: Under this? Under Simon's
11 Estate?
12 THE COURT: Wherever it's noticed. It was
13 noticed --
14 MR. BERNSTEIN: Well, like the deposition was
15 noticed in Shirley.
16 THE COURT: Hold on. No, I'm looking at it.
17 The order entered was in Simon.
18 MR. BERNSTEIN: But you're ruling on things
19 from Shirley's Estate, like production --
20 THE COURT: It says Ted's Bernstein's motion.
21 I'm not going to revisit this. That's my order.
22 MR. BERNSTEIN: Can I ask you another
23 question? You're talking about me having counsel
24 and not being -- you know, how to file. These are
25 estate actions brought against me as a beneficiary

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1 who's already been injured by fraud, forgery --
2 THE COURT: Slow down.
3 MR. BERNSTEIN: My children have been harmed,
4 et cetera. Money has been cut off. That's life
5 support money to us.
6 THE COURT: Mr. Bernstein, what do you want to
7 tell me?
8 MR. BERNSTEIN: I'm asking you, because it
9 benefits the Estate, obviously they're bringing all
10 these actions, and it's obvious I need counsel.
11 THE COURT: Get to the bottom line.
12 MR. BERNSTEIN: Can you approve that the
13 Estate pay for my counsel?
14 THE COURT: If I can -- so here's the answer
15 to that: How do I legally do that, is the answer.
16 And if you've hired a lawyer or spoke to a lawyer,
17 then why don't you ask the lawyer if it's legally
18 allowed?
19 Remember, I can't give you a legal opinion. I
20 have to --
21 MR. BERNSTEIN: It is legal --
22 THE COURT: Then have the lawyer file the --
23 MR. BERNSTEIN: I did file a motion with you
24 for legal fees, to compel them to pay legal fees.
25 THE COURT: Have your lawyer, have your

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1 purported lawyer bring that matter before me.
2 MR. BERNSTEIN: He won't represent me until I
3 pay him.
4 THE COURT: He can represent you on a matter
5 to determine whether I'll have the estate pay for
6 him or not. He has to come forward on that.
7 MR. BERNSTEIN: Wait, how do you say that?
8 One more. No, I'm listening.
9 THE COURT: He can bring a matter before me to
10 determine whether the Estate should pay for him.
11 MR. BERNSTEIN: And then you rule on that?
12 THE COURT: And then I'll rule on it, sure.
13 There is nothing wrong with ruling on that. If
14 it's legal --
15 MR. BERNSTEIN: Well, it saves you a headache
16 and me a headache.
17 THE COURT: You know what, we don't want
18 headaches.
19 But we need these pleadings to be,
20 Mr. Bernstein, we need these pleadings to be
21 contained a little bit better. We need to have a
22 more sensible direction of the service list. We
23 need to focus in on who it is that really is the
24 focus of the action or the adversary proceeding.
25 And here's my final word on this, and you're

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1 pro se. So what I tell pro ses and I tell this to
2 lawyers, the idea of litigation is to win, okay?
3 True? Is to win, right? You want to win in court?
4 MR. BERNSTEIN: Uh-huh.
5 THE COURT: Do you agree?
6 MR. BERNSTEIN: Yeah.
7 THE COURT: So this is a non-jury proceeding.
8 So let's finish that sentence: You want to win in
9 court by the judge ruling in your favor. That
10 should be the goal, true?
11 MR. BERNSTEIN: True.
12 THE COURT: Okay. So you have to always, as
13 lawyers and pro ses, what you have to do is step
14 back and say, how do I win? What is it that I need
15 to do to win? Winning isn't necessarily upsetting
16 the other side.
17 I really don't get upset, you know. It's a
18 little bit of a different thing because I'm not the
19 party to this.
20 But the idea is, is that you have to be able
21 to play this game to win at it. And there is a
22 certain way of doing it. There is a certain style.
23 The more you focus in on the things that will
24 help you win, the better for you. The more you
25 cloud those cases, the more you throw stuff into

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1 the pot that is not directed to winning, the more
2 you make your path difficult, because that's more
3 of the clouds that I have to pull aside to be able
4 to figure out the nature of what it is that maybe
5 you have a good case on --
6 MR. BERNSTEIN: They're the ones suing me.
7 THE COURT: But maybe I won't be able to find
8 it because there is all this other stuff in there.
9 That's directed to everybody, okay?
10 But they know this because they're trained
11 lawyers. But you need to --
12 MR. BERNSTEIN: They're the ones filing all of
13 these pleadings on me and making me to respond --
14 THE COURT: I'll look at it all. Write the
15 order up.
16 MR. BERNSTEIN: One more second. I didn't get
17 to put on --
18 THE COURT: On what?
19 MR. BERNSTEIN: I filed a response to theirs.
20 THE COURT: But that's not a motion. That's
21 your response.
22 MR. BERNSTEIN: Yeah, no, I filed a motion.
23 THE COURT: No, no.
24 MR. BERNSTEIN: Three components to hear
25 today.

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1 THE COURT: I don't have a motion for contempt
2 sent by you.
3 MR. BERNSTEIN: Yeah, you do.
4 THE COURT: Where is there a motion? I don't
5 have that notice.
6 Do you have that?
7 MR. ROSE: (Non-verbal response).
8 MR. BERNSTEIN: I filed it on Friday to be
9 heard here.
10 THE COURT: You can't. You can't file
11 something on Friday to be heard on --
12 MR. BERNSTEIN: Why? They do. They did last
13 time.
14 THE COURT: Do two wrongs make a right?
15 All right. Feel better with your mouth.
16 Write the order and deal with the deposition.
17 We've got to get you folks out. It's 11:15. I
18 haven't even heard my 10:45 yet.
19 MR. ROSE: Your Honor, I think your ruling is
20 that he hasn't violated your order yet, but
21 shouldn't your order -- no lawyer could republish
22 the thing that they know is privileged, so can we
23 amend your order so he can --
24 THE COURT: Here's the thing: I'm going to
25 look at more -- at a separate hearing what's been

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1 filed. File the motion to strike and remove, and
2 I'll put it into perspective there. But nothing
3 else filed in the form of pleadings. Don't --
4 MR. BERNSTEIN: I have to --
5 THE COURT: -- until you come before me. I
6 have time. You need to do it. I'll get you in
7 right away. Okay, bye.
8 MR. BERNSTEIN: Wait, wait. I filed things in
9 response to these lawsuits.
10 THE COURT: I'm not undoing what's been filed,
11 but no more action on them. I've stayed
12 everything.
13 MR. BERNSTEIN: Even in Oppenheimer?
14 THE COURT: Even the Oppenheimer.
15 MR. BERNSTEIN: Everything?
16 THE COURT: I'm staying --
17 MR. BERNSTEIN: So should we notify that guy?
18 THE COURT: Notify what you want. Yeah,
19 notify everybody on that stuff.
20 MR. BERNSTEIN: That everything is stayed?
21 THE COURT: Everything is stayed. We can look
22 more carefully at the pleadings in the case.
23 MR. ROSE: Is he prohibited from e-mailing
24 everyone in my firm?
25 THE COURT: Yeah, yeah. No more e-mailing.

1 MR. ROSE: I have an order on that.
 2 THE COURT: You're not e-mailing -- no, there
 3 is nothing to -- there is no more notices of
 4 hearing, Mr. Rose. No more e-mailing to the crew.
 5 It's unnecessary to do that.
 6 MR. ROSE: I have an order in each of the
 7 three cases.
 8 THE COURT: You don't need to do that until I
 9 determine they're proper parties.
 10 MR. BERNSTEIN: Okay.
 11 THE COURT: Okay. You got it. Goodbye. Go
 12 outside and work on the deposition. You need to
 13 meet outside to finish the deposition place.

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15 (The hearing was concluded.)
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1 C E R T I F I C A T E
 2
 3 STATE OF FLORIDA
 4 COUNTY OF PALM BEACH
 5
 6
 7 I, Jeana Kim, Registered Realtime Reporter,
 8 State of Florida at large, certify that I was authorized
 9 to and did stenographically report the foregoing
 10 proceedings and that the transcript is a true and
 11 complete record of my stenographic notes.

12 Dated this 16th day of September, 2014.
13

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 15  
 Jeana Kim, CRR, RMR, FPR, CLR

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

-vs-

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja.B. and Jo.B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja.B. and Jo.B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

HEARING BEFORE THE HONORABLE
MARTIN H. COLIN

Thursday, March 26, 2015
South County Courthouse
Courtroom 8
Delray Beach, Florida 33444
1:03 p.m. - 2:10 p.m.

Stenographically Reported By:
April Y. Segui, RPR, FPR
Registered Professional Reporter
Florida Professional Reporter

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APPEARANCES:

On behalf of the Plaintiff:

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On behalf of D.B., Ja.B. and Jo.B., Minors, as
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and individually:

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BY: ELIOT BERNSTEIN

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I N D E X
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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
JOHN POLETTO				
BY MR. ROSE	4			
TED BERNSTEIN				
BY MR. ROSE	16			
BY MR. ELIOT BERNSTEIN		18		
ELIOT BERNSTEIN	30			
JOHN POLETTO				
BY MR. ELIOT BERNSTEIN		42		

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E X H I B I T S
- - -

NUMBER	DESCRIPTION	PAGE
EXHIBIT 1	MR. POLETTO'S CV	5
EXHIBIT 2	MR. POLETTO'S AFFIDAVIT	7
EXHIBIT 3	CONTRACT	10
EXHIBIT 4	APPRAISAL	11

P R O C E E D I N G S

- - -

THE COURT: All right. We're back on the Bernstein Shirley trust case. Time is of the essence. I carved out a time for you folks, so who are you going to call as your first witness?

MR. ROSE: John Poletto, P-O-L-E-T-T-O. He's coming down the hall now.

Mr. Poletto, you'll be on the stand.

THE COURT: Have a seat, please. Raise your right hand.

Thereupon,

(JOHN POLETTO)

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: Go ahead.

MR. ROSE: If I may approach, Your Honor.

THE COURT: Yes.

D I R E C T E X A M I N A T I O N

BY MR. ROSE:

Q. Would you state your name for the record, sir?

A. John Poletto.

Q. And what's your occupation?

1 A. I am the co-owner of Nestler Poletto
2 Sotheby's International Realty as a real estate broker.

3 **Q. I have attached -- Exhibit 1 is a page from**
4 **your Web site that says, "About John Poletto." Is that**
5 **an accurate page from your Web site that describes some**
6 **of your professional background?**

7 A. Yes, it is.

8 MR. ROSE: I move Exhibit 1 into evidence.

9 THE COURT: Any objection? It's his CV.

10 MR. ELIOT BERNSTEIN: No.

11 THE COURT: Okay. Number 1.

12 (Exhibit No. 1 was marked for identification
13 and admitted in evidence.)

14 BY MR. ROSE:

15 **Q. Is your firm the listing agent for the house**
16 **at 7020 Lions Head Lane owned by the Shirley Bernstein**
17 **Trust?**

18 A. Yes.

19 **Q. How long has that house been on the market?**

20 A. One thousand one hundred fifty days.

21 **Q. How does that compare to other listings in**
22 **your firm?**

23 A. It is one of the longest on record in the
24 last five years.

25 **Q. And the house was initially listed by whom?**

1 A. Initially listed by our company, myself.

2 **Q. Who owned the house or who was the --**

3 A. Si Bernstein.

4 **Q. Do you recall when that was listed?**

5 A. Original listing date was January 24, 2012.

6 MR. ROSE: For the record, Mr. Bernstein died
7 in September of 2012.

8 BY MR. ROSE:

9 **Q. What did you think of the price when it was**
10 **listed?**

11 A. It was extremely high.

12 **Q. Can you tell the Court why it was listed that**
13 **high?**

14 A. Mr. Bernstein had another residence on the
15 ocean, and he was spending time between both residences
16 and wasn't motivated at that moment to sell.

17 THE COURT: What was the listing amount?

18 THE WITNESS: On the other property?

19 THE COURT: On this property.

20 THE WITNESS: On this property, three million
21 four-fifty.

22 THE COURT: Go ahead.

23 BY MR. ROSE:

24 **Q. Did you provide an affidavit at my request?**

25 A. I did.

1 **Q. Before you signed it, did you read it and**
2 **edit it?**

3 A. I did.

4 MR. ROSE: Exhibit 2, Your Honor, is the
5 Affidavit of John Poletto. I would move that into
6 evidence.

7 THE COURT: Any objection to his affidavit?

8 MR. ELIOT BERNSTEIN: No. Well, I haven't
9 had any time to review any of this stuff.

10 THE COURT: We had this hearing on an
11 expedited basis. That's not a legal basis not to
12 admit it. Okay. Number 2.

13 (Exhibit No. 2 was marked for identification
14 and admitted into evidence.)

15 BY MR. ROSE:

16 **Q. Is there a pending contract on the house?**

17 A. Yes.

18 **Q. How much is -- what's the price of the**
19 **pending contract?**

20 A. 1.1 million.

21 **Q. Is it your belief that -- a recommendation**
22 **that that offer should be accepted by the trustee?**

23 A. Yes.

24 **Q. Does that offer represent, in your opinion,**
25 **the current fair market value of the property?**

1 A. Yes.

2 Q. Can you tell the Court if you have any --
3 well, specific experience in the St. Andrews community
4 where this particular house is located?

5 A. I started with the developer in 1983, and --
6 with new sales in the community. 1989 my partner, Mark
7 Nestler, and I established our realty company called
8 Nestler Poletto Realty. We have since 1983, on the new
9 sales and resale side, sold over 750 new and resale
10 homes within the community.

11 Q. Where do you currently live?

12 A. In St. Andrews Country Club for the last 25
13 years.

14 Q. Does your firm have a number of other houses
15 currently listed in the St. Andrews community?

16 A. Yes. Currently about 12.

17 Q. Okay. Was the asking price lowered at some
18 point from what Simon Bernstein had initially told you
19 to sell the house for?

20 A. Yes.

21 Q. And can you briefly tell the Court the short
22 history of that?

23 A. The short history, started with a number that
24 Si Bernstein knew, at the outset, was completely a
25 start number. We went from -- over the course of time

1 down into about -- we broke the two million range in
2 July of 2013. We went to one million nine ninety-five,
3 taking it down consistently based upon showings. We
4 had traffic and showings, but were simply not getting
5 offers.

6 **Q. Did you have the house -- did you suggest**
7 **that the house be appraised?**

8 A. In all -- same situations, I recommended it
9 to all clients.

10 **Q. Was the house, in fact, appraised?**

11 A. Yes.

12 MR. ROSE: May I approach, Your Honor?

13 THE COURT: You may.

14 MR. ROSE: I just need to give Mr. Bernstein
15 his copies.

16 MR. ELIOT BERNSTEIN: Your Honor, we've never
17 seen this.

18 THE COURT: Well, he's showing it to you.

19 MR. ELIOT BERNSTEIN: It's the first time
20 we're getting this stuff, okay, just on the
21 record --

22 MR. ROSE: This is 3 and this is 4.

23 MR. ELIOT BERNSTEIN: -- and we're
24 beneficiaries.

25

1 (Exhibit No. 3 was marked for
2 identification.)

3 BY MR. ROSE:

4 Q. I'm going to hand you what's marked as
5 **Exhibit 3. Is this a contract between a buyer, whose**
6 **name has been redacted, and the Shirley Bernstein**
7 **Trust?**

8 A. Yes.

9 Q. **For \$1.1 million?**

10 A. That's correct.

11 Q. **Look at -- paragraph 4 on the first page says**
12 **that the closing was to be on April 20, 2015 --**

13 **Do you see that?**

14 A. Yes.

15 Q. **-- or before.**

16 **Did circumstances arise after this was signed**
17 **that necessitated an earlier or more immediate closing?**

18 A. Yes.

19 Q. **Can you just tell the Court briefly?**

20 A. As of April 1st of this year the membership
21 is going to increase \$30,000. Current membership is
22 \$95,000. It will be going to \$125,000.

23 Q. **When the house was appraised, were you given**
24 **a copy of the appraisal?**

25 A. I was not.

1 MR. ROSE: I would move the appraisal in as
2 Exhibit 4.

3 THE COURT: Any objection to the appraisal?

4 MR. ELIOT BERNSTEIN: No.

5 THE COURT: Number 4.

6 (Exhibit No. 4 was marked for identification
7 and admitted into evidence.)

8 BY MR. ROSE:

9 Q. I'm going to show you an appraisal that was
10 done in July of 2014, and I believe comes out as an
11 indicated value in the range of one million two or one
12 million two fifty?

13 A. Correct.

14 Q. Is that consistent with your memory?

15 A. Yes.

16 Q. Now, based upon recent comps in the
17 neighborhood, do you have a belief whether \$1.1 million
18 is a reasonable price for this house?

19 A. I'll give these to you so you can have them
20 for the record. A property that was originally listed
21 that we had listed for over \$3 million, and was reduced
22 over the course of time over the course of one year,
23 320 days, list price of one million eight ninety-nine
24 at 7876 square feet of living space, that property sold
25 for 1.3 million, and just closed as of March 11th and

1 is the most recent sale, and that sold for \$165 a
2 square foot. This home, it was updated and in really
3 exceptional condition. That is one comparable sale. A
4 second comparable sale on 7106 Ayrshire Lane, which by
5 the way, this property also is at 7154 Ayrshire Lane.
6 The second property at the 7106 Ayrshire Lane was
7 listed originally at one nine seven five is
8 7,594 square feet of living space -- both of these
9 homes are substantially larger than the subject
10 house -- on the market for a fourth time, but sold for
11 one million three seventy, and that was almost
12 7600 square feet. That cost per square foot was \$180 a
13 square foot. The proposed number we have is \$177 a
14 square foot. These are the two most recent sales that
15 are within the last six months.

16 **Q. How many times have you shown this, the**
17 **Bernstein house?**

18 A. Over 75 times over the time period.

19 **Q. How would you describe the layout? Is it a**
20 **layout that is attractive to most buyers?**

21 A. Si Bernstein bought this house on a builder
22 foreclosure, and the reason was this particular builder
23 had three homes that did not hit the marketplace as to
24 what properties -- what buyers were buying in
25 St. Andrews. Mr. Si, actually, and his wife purchased

1 the home and customized the homes themselves. It
2 doesn't have a floor plan that is consistent with the
3 buyers for St. Andrews.

4 **Q. And what's the condition of the house**
5 **currently?**

6 A. Well, the biggest factor is it's all Spanish;
7 Spanish driveway tiles, interior Spanish tile floors,
8 interior -- or exterior patio all terra cotta tile.
9 Most people would tear all of that out.

10 **Q. Can you tell the Court how much you would**
11 **expect the new buyer to spend on the house in**
12 **renovations?**

13 A. In excess of 600,000.

14 **Q. Have there been any prior written offers in**
15 **excess of \$1,000,000? Written offers.**

16 A. No.

17 **Q. Have there been any prior oral offers in**
18 **excess of \$1,000,000?**

19 A. Four months ago we received an oral offer of
20 approximately 1.1 million.

21 **Q. What happened to that offer?**

22 A. The buyer was able to get his builder into
23 the property and determine the home needed too much
24 work for them to consider it seriously, so it never
25 went to a written contract offer.

1 Q. Have the dealings with this particular buyer
2 been arm's length and conducted in good faith?

3 A. Yes.

4 Q. Did they initially have a lower offer and it
5 was negotiated to being higher?

6 A. Correct. Well, let me counter that. Their
7 initial conversation with me was a number in the nine
8 to nine fifty range, and I simply said that, in my
9 opinion, that that would not even receive a response.

10 Q. And then they made an offer, there was a
11 counteroffer. That's in your Affidavit. The 1.1 was
12 indicated as their best and final offer?

13 A. And we -- on behalf of the Bernstein estate,
14 we countered the \$1.1 million offer unfurnished, as is.
15 It was countered at one million one fifty. The buyer
16 rejected that counter.

17 Q. Do you agree with the statement that although
18 there's an appraisal, the best evidence of the market
19 value of the property would be putting it on the market
20 for an extended period of time and showing it to a
21 number of buyers?

22 A. Yes.

23 Q. In your opinion, this offer is --
24 Strike that.
25 Is this a fire sale price?

1 A. By no means.

2 **Q. And, in your opinion, you would recommend**
3 **that the Court approve the transaction as structured?**

4 A. In my opinion.

5 MR. ROSE: Nothing further. Thank you, sir.

6 THE COURT: Cross.

7 MR. ELIOT BERNSTEIN: Your Honor, do I get an
8 opening statement in this hearing?

9 THE COURT: No.

10 MR. ELIOT BERNSTEIN: I don't think I need to
11 get cross of him if I can get my statement out.

12 THE COURT: No. Because opening statements
13 are not evidence, so I'm going to let you testify.

14 MR. ELIOT BERNSTEIN: Okay. Put in evidence
15 and stuff?

16 THE COURT: Yeah. Now is the time for
17 cross-examination.

18 MR. ELIOT BERNSTEIN: Can I reserve that?

19 THE COURT: Reserve what?

20 MR. ELIOT BERNSTEIN: The time to
21 cross-examine.

22 THE COURT: Yeah. Sure, you can. I'll let
23 you do that.

24 MR. ELIOT BERNSTEIN: I'm not sure I need
25 anything from him.

1 THE COURT: Okay. He's reserving on cross.
2 Keep him here just to see if we need him.

3 Any other witnesses?

4 MR. ROSE: The only other witness I would
5 call would be Ted Bernstein.

6 Just as a proffer, all he would say is that
7 there's a contract, he signed it, and he wants to
8 close, and he followed the advice of the
9 professional realtors he hired.

10 THE COURT: Well, I'm not accepting a
11 proffer. Put him on or not.

12 MR. ROSE: I'll put Ted on the stand.

13 THE COURT: Stay here.

14 Thereupon,

15 (TED BERNSTEIN)

16 having been first duly sworn or affirmed, was examined
17 and testified as follows:

18 THE WITNESS: Yes, I do.

19 DIRECT EXAMINATION

20 BY MR. ROSE:

21 **Q. Did you receive the offer that's embodied in**
22 **the contract that's marked as Exhibit 3?**

23 A. Yes, I did.

24 **Q. And is it your opinion that that is in the**
25 **best interest of the trust and the beneficiaries of the**

1 trust?

2 A. Yes, it is.

3 Q. Have you followed the advice and counsel of
4 the professional realtors that you hired and you just
5 heard testify?

6 A. Yes.

7 Q. And what's the carrying cost of the house if
8 it's not sold under this contract, approximately, per
9 month?

10 A. Six, \$7,000 per month.

11 MR. ROSE: Nothing further.

12 THE COURT: Any questions?

13 MR. ELIOT BERNSTEIN: Yeah. Can I examine
14 him?

15 THE COURT: Yeah. That's what
16 cross-examination means.

17 MR. ELIOT BERNSTEIN: Okay. Can I submit
18 some things into evidence?

19 THE COURT: Give them to Marias and he'll --
20 it's not in evidence. You have to show it to him
21 first.

22 MR. ELIOT BERNSTEIN: Who, Ted?

23 THE COURT: Yes, if that's what you want to
24 do with them. Go ahead.

25 MR. ELIOT BERNSTEIN: Do I have to mark it in

1 evidence?

2 THE COURT: Let's wait. Give him a document,
3 ask him what you want. If you want to move it in,
4 I'll consider it.

5 CROSS (TED BERNSTEIN)

6 BY MR. ELIOT BERNSTEIN:

7 Q. Ted, are you familiar with that report that's
8 a Palm Beach County sheriff's report?

9 MR. ROSE: Objection. Relevancy.

10 THE COURT: I don't know what it says. Do
11 you have an extra copy for me?

12 MR. ELIOT BERNSTEIN: I didn't have a lot of
13 time to prepare three copies for today's hearing,
14 but I've got two, one for you. They have 50
15 copies of this. We sent it in 20 pleadings.

16 MR. ROSE: This is dealing with issues
17 about --

18 THE COURT: I want to see it.

19 MR. ELIOT BERNSTEIN: Oh. Show it to you?

20 THE COURT: So the question is: Is he
21 familiar with this document purportedly authored
22 by the sheriff's office? Is that the question?

23 MR. ELIOT BERNSTEIN: Correct.

24 THE COURT: You can answer yes or no. Are
25 you familiar with it?

1 THE WITNESS: Yes, I am familiar with it.

2 THE COURT: Go ahead. Next question.

3 MR. ELIOT BERNSTEIN: Can I use that?

4 THE COURT: Yeah.

5 BY MR. ELIOT BERNSTEIN:

6 Q. Okay. Can you turn to page 5, the second
7 paragraph? It's highlighted. It says the following,
8 correct, "He said" -- that would be you, Ted -- or
9 Spallina, your attorney who was --

10 Was Robert Spallina, Ted, your attorney as
11 trustee and PR of the estate and trust of Shirley?

12 MR. ROSE: Objection. Relevance. Beyond the
13 scope.

14 THE COURT: Overruled. Overruled.

15 Was he?

16 THE WITNESS: Was he counsel for me for the
17 Shirley Bernstein Trust?

18 BY MR. ELIOT BERNSTEIN:

19 Q. And Shirley Bernstein when you were PR.

20 A. I'm not sure about PR. They were counsel for
21 the Shirley Bernstein trust for a period.

22 Q. So the trust that's central to this piece of
23 property; correct?

24 A. Yes.

25 Q. Okay. So he, Spallina, said, though, that

1 **"Against" --**

2 THE COURT: Here's the thing. You don't know
3 this, but you're reading from a document not in
4 evidence --

5 MR. ELIOT BERNSTEIN: Can I submit it?

6 THE COURT: -- and the author of it, of the
7 document, is the sheriff's office, I assume is
8 what you're telling me, and they are quoting
9 someone who is not here, Mr. Spallina, so there's
10 multiple evidentiary problems there.

11 MR. ELIOT BERNSTEIN: Can I go to ones when
12 Ted speaks to the sheriff?

13 THE COURT: Well, just ask him the question
14 without referring to the document. Is this true?

15 BY MR. ELIOT BERNSTEIN:

16 **Q. Is it true that against -- that your counsel,**
17 **Spallina, admitted that against his better judgment, he**
18 **altered the first page of the first amendment to the**
19 **Shirley Bernstein Trust Agreement that you're trustee**
20 **for; right?**

21 MR. ROSE: Objection. Relevance.

22 MR. ELIOT BERNSTEIN: All relevant.

23 MR. ROSE: We are only here to decide whether
24 the sale of this particular property makes sense.

25 THE COURT: Slow down.

1 So tell me, in a short form, Eliot, what the
2 relevancy of this is.

3 MR. ELIOT BERNSTEIN: What we're going to
4 establish is that Ted has sold the property in the
5 past against the advice of his counsel, then made
6 distributions to improper parties against the
7 advice of his counsel, that he didn't read the
8 trust document he was operating under when he did
9 that, that he signed tax forms that are going to
10 be -- that are under investigation right now where
11 he alleged he was personal representative of the
12 estate. You'll remember the estate at the time he
13 signed that was closed.

14 THE COURT: Remember, I said in short form
15 give me the relevancy.

16 MR. ELIOT BERNSTEIN: The relevance is -- is
17 this sale going to cause a simmer -- similar group
18 of allegations, or fraud; caused the sheriff's
19 department to go investigate all of this;
20 caused --

21 THE COURT: Well, you just told me that the
22 allegations on this other property had to do with
23 improper disbursements.

24 MR. ELIOT BERNSTEIN: Improper sale, improper
25 documents.

1 THE COURT: All right.

2 MR. ELIOT BERNSTEIN: And we're going to show
3 that he's making this sale under the same kind of
4 things where no notice was given to beneficiaries,
5 it's not following the statutes. So the question
6 isn't what the property is worth --

7 THE COURT: I'm trying to do this in a
8 separate fashion. I'm not deciding right at this
9 moment whether to let the sale take place for any
10 of the legal issues that you might want to raise.
11 I'll hear about that in a second. What I want to
12 decide now is there's a piece of property, it's
13 owned by the trust. That, you said, was not in
14 dispute. Ted is the trustee.

15 MR. ELIOT BERNSTEIN: Alleged. We've got a
16 hearing coming up on that three days after.

17 THE COURT: He is the trustee for purposes of
18 that transaction, and the issue is whether the
19 trust, regardless of who the trustee is, can sell
20 this piece of property, pursuant to this contract
21 for \$1.1 million, and have the trust proceeds held
22 in a way that I'm going to determine, not the way
23 anyone else wants it to be. So the issue is: Is
24 it appropriate to have the sale take place as
25 opposed to holding onto the piece of real estate

1 that the realtors or Ted said cost six or \$7,000 a
2 month to do. Then I'll deal with the legal issues
3 separately. This is a factual issue on whether
4 it's good for the trust, putting everything else
5 aside. I'm not deciding right now any of the
6 other issues.

7 MR. ELIOT BERNSTEIN: Okay. So I'll be
8 able --

9 THE COURT: You can ask him questions about
10 the reasonableness of the sale for the amount in
11 question --

12 MR. ELIOT BERNSTEIN: Okay.

13 BY MR. ELIOT BERNSTEIN:

14 **Q. When you said --**

15 THE COURT: -- which he doesn't, apparently,
16 know anything about. He's listening to
17 Mr. Poletto.

18 MR. ELIOT BERNSTEIN: Okay. And I'm saying,
19 for right now, I don't have a lot of questions as
20 to -- I haven't had any of these documents to look
21 at anything they have said. So the beneficiaries,
22 if we didn't get a Zillow report, we would have
23 never known this sale was happening, okay?

24 THE COURT: Well, we'll deal with that in a
25 second.

1 MR. ELIOT BERNSTEIN: Okay.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Ted, did you notify the beneficiaries of that
4 sale? Did you send out the documents when you started
5 closing? Did you give any notice to any beneficiaries?

6 MR. ROSE: Objection.

7 THE COURT: It is definitely relevant so let
8 me ask. You had this property listed; correct?

9 THE WITNESS: Yes.

10 THE COURT: Did the beneficiaries know that
11 the property was on the market?

12 THE WITNESS: Yes.

13 THE COURT: Okay. And at some point you got
14 a contract?

15 THE WITNESS: Yes.

16 THE COURT: Okay. And it looks like the
17 contract was signed.

18 MR. ELIOT BERNSTEIN: See, I didn't even know
19 that.

20 Let the record stand that I just got that.

21 THE COURT: You're interrupting me. Sit down
22 now because you just violated a serious rule. Sit
23 down. Sit down. I'm in the middle of
24 questioning. I'll let you participate, but you're
25 not going to be standing on top of me when you do

1 that.

2 Looks like the date of the contract is
3 March 16, 2015. Does that sound right?

4 THE WITNESS: It does, Your Honor.

5 THE COURT: So when this contract was
6 executed, did you provide notice to anyone of the
7 fact that the property that you said you had
8 noticed them was being listed, was now under
9 contract?

10 THE WITNESS: Yes, Your Honor, I did. There
11 are several other beneficiaries, obviously, so
12 yes, I did. I know that Alan Rose has been in
13 communication with Brian O'Connell, so, yes, the
14 beneficiaries, many of the beneficiaries were
15 aware of the sale of the property.

16 THE COURT: Well, did you do -- deal with the
17 disseminate of the information about the contract
18 or did you leave it to someone else to do that?

19 THE WITNESS: I believe it was left to Alan
20 Rose.

21 THE COURT: All right. So do you know
22 whether Eliot Bernstein received notice?

23 THE WITNESS: I believe that he did through
24 Mr. O'Connell. That's my belief.

25 THE COURT: So -- all right.

1 Next time -- Eliot Bernstein, the next time
2 you laugh --

3 MR. ELIOT BERNSTEIN: I didn't laugh.

4 THE COURT: I heard you.

5 MR. ELIOT BERNSTEIN: I coughed. I took a
6 sip and coughed.

7 THE COURT: Well, you know what? Go outside
8 and cough.

9 MR. ELIOT BERNSTEIN: I'm sorry. I did not
10 laugh.

11 THE COURT: You know what? There was a while
12 that you were behaving well.

13 MR. ELIOT BERNSTEIN: I am.

14 THE COURT: You're getting worse now, because
15 noise comes from you, gestures come from you,
16 okay? Every time you do that two things happen.
17 It's disruptive, just like it is now, okay, and it
18 makes the presentation of your case worse. So if
19 you have a desire to hurt yourself, continue to do
20 this until eventually I stop you, okay? So I'm
21 warning you, on the record, cut that out. No more
22 disruptions. Speak only when I ask you to speak,
23 and I'll always give you time to do it.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: No noise, no raising and flailing

1 your hands. No one else does that, only you. Cut
2 it out. Understood?

3 MR. ELIOT BERNSTEIN: I will, yes, sir.

4 THE COURT: Okay. Thanks.

5 So I want to get to the heart of this.

6 Miss Foglietta, you're here for?

7 MS. FOGLIETTA: Mr. O'Connell.

8 THE COURT: Did you have notice of this sale
9 from Ted Bernstein?

10 MS. FOGLIETTA: No. The first notice I
11 received was from Eliot and then I called
12 Mr. Rose, who then told me he was just about to
13 file a motion, and call my office and advise us of
14 it.

15 THE COURT: When was that?

16 MS. FOGLIETTA: Monday afternoon.

17 THE COURT: Today is the 26th, so Monday was
18 the 23rd.

19 Mr. Rose, tell me and show me the notices
20 that you gave of this contract being executed on
21 the 16th by Ted. Tell me and then show me. I
22 mean, put aside tell me. Show me, because Ted
23 says he didn't do it, he allowed you to do it.
24 Show me the notices that you gave. I don't
25 want -- there's no words here. Hand them to me.

1 MR. ROSE: It's the motion we filed.

2 THE COURT: Okay. The motion. The first
3 time notice of this contract went to the
4 beneficiaries or the PR was when you filed the
5 motion?

6 MR. ROSE: Correct.

7 THE COURT: When was that?

8 MR. ROSE: To correct Your Honor, though, Ted
9 signed it on the 18th, not the 16th.

10 THE COURT: All right.

11 MR. ROSE: That was a Wednesday. I was out
12 of town. The buyers had seven days to do an
13 inspection and cancel the contract. As soon as I
14 got back to the office Monday, we prepared a
15 motion to approve and we sent it to everybody.

16 THE COURT: Did you send it to the PR's
17 office?

18 MR. ROSE: I did.

19 THE COURT: Well, you just heard that they
20 said they didn't know about it until Eliot told
21 them.

22 MR. ROSE: The sequence of the events is Ted
23 signed the contract, it looks like, on the 18th.
24 The buyers were doing their inspections. The
25 realtors changed the listing from listed to a

1 contingent contract. Eliot found out about it.
2 He actually e-mailed out a notice of lis pendens
3 on Saturday morning. So he had learned that. I
4 returned from my trip on Sunday night. I prepared
5 a motion for -- to approve it. I needed an
6 affidavit from Mr. Poletto, which I had sent him
7 Sunday, to wait for. When I got his affidavit
8 back, I filed our motion. In the mean time,
9 Miss Foglietta called me and I confirmed the sale,
10 made arrangements to get the personal property
11 inspected and all of that.

12 THE COURT: All right. Have a seat.

13 I got that. Okay. I got it.

14 Because we can't go on too long on this, do
15 you have any other questions about Ted dealing
16 with his -- the testimony he's given so far?

17 MR. ELIOT BERNSTEIN: Does that include Alan?

18 THE COURT: No. Answer my questions. You
19 can't ask Alan anything. Any other
20 cross-examination of Ted?

21 MR. ELIOT BERNSTEIN: Yeah.

22 BY MR. ELIOT BERNSTEIN:

23 **Q. I need to know what beneficiaries you told**
24 **that there was this sale.**

25 THE COURT: He just said he left it up to his

1 lawyer. He did say that.

2 Have a seat. He's done for now.

3 MR. ROSE: Nothing further.

4 THE COURT: Miss Foglietta, do you have any
5 position on the appropriateness or reasonableness
6 of the sale?

7 MS. FOGLIETTA: No. My only concern is the
8 personal property, to make sure that's not in the
9 contract or any fixtures.

10 THE COURT: We'll deal with that if we have
11 to.

12 So, Eliot, I'm going to let you testify, if
13 you want. I'm going to break this down.
14 Initially, it goes just to the issue Mr. Poletto
15 spoke about, some aspect of whether it's
16 reasonable to have this sale done at the
17 1.1 million price and close on the 31st.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 MR. ELIOT BERNSTEIN: Your Honor, since I
22 didn't get any of the documents, and can't review
23 any of this, and see what -- if there was 75
24 people, how many made offers, even dummy offers,
25 whatever, low balls, would validate any of this.

1 So this is all being thrown on me. I didn't even
2 have the contract until today, okay? So I haven't
3 had any of these documents until today. I had no
4 chance to cross-examine or get a deposition from
5 Mr. Poletto. These are issues that would
6 concern --

7 He had -- when my dad died he had listed
8 property with Mr. Poletto at \$5.5 million on these
9 two properties. We're about to sell both of them
10 for two million, as if the market blew apart, went
11 screaming down in that time. In fact, it went the
12 opposite way.

13 So there's Zillow listings, which is just
14 basic Zillow online, where the property's at two
15 four with a \$170,000 increase in the last few
16 days, 90 days or something.

17 THE COURT: Why didn't you show that to
18 Mr. Poletto when he was on the stand?

19 MR. ELIOT BERNSTEIN: I'm reserving my right,
20 if we have to get there. I want to get to the
21 legal sufficiency, if this sale is following
22 proper procedure, because that's what you're
23 always interested in, statutes and all those codes
24 and stuff.

25 THE COURT: Go ahead.

1 MR. ELIOT BERNSTEIN: So the question is:
2 Were beneficiaries given time? Did I get a chance
3 to throw out that I might want to buy the house
4 with my father or anything, if I had time to look
5 at all the documents, get a second opinion? No.
6 Has there been adequate disclosure of this sale?
7 And let me tell you. Alan Rose is wrong. We got
8 alerted by Zillow that the property was being
9 pending a sale (sic). We called the -- Joi and
10 spoke with her and said --

11 THE COURT: All right. Stop for a second.

12 I have a question now, looking at this, to
13 Mr. Poletto. Mr. Poletto, come on up because
14 there's something I need to ask you on the record.

15 It looks like the contract -- the closing is
16 to be on April 20th or before; correct?

17 MR. POLETTTO: That was the initial contract
18 offer. The contract that was finally accepted,
19 the closing date is on or before the 31st of this
20 month.

21 THE COURT: So this isn't the contract?

22 MR. POLETTTO: That's not the final contract.

23 THE COURT: I have two of them. The Exhibit
24 3 says April 20th.

25 MR. ROSE: There's actually an addendum in

1 there, I believe.

2 MR. POLETTO: The addendum takes it to the
3 31st of March. The reason being for that, Judge,
4 is because St. Andrews Country Club, the issue was
5 in order to close and take advantage --

6 THE COURT: I'm looking at the exhibit to see
7 if I see that in here.

8 MR. POLETTO: It's in the addendum.

9 MR. ROSE: May I approach, Your Honor?

10 THE COURT: I have it here. It's attached.

11 MR. ROSE: It's on paragraph 20. I can show
12 it to Your Honor.

13 THE COURT: Okay. Let me read it.

14 MR. ROSE: The actual --

15 THE COURT: I'm reading the Addendum. Okay.
16 Well, the Addendum that was signed on the 18th
17 says that the "Buyer agrees to make full and
18 complete application for golf membership including
19 payment of \$95,000 for it." And it's contingent
20 upon -- "The contract is contingent upon buyer
21 being able to be approved for a golf membership."

22 So has he made the application?

23 MR. POLETTO: Yes.

24 THE COURT: Is he approved?

25 MR. POLETTO: He is in the process right now

1 of being approved, yes. There's no reason that he
2 would not be approved.

3 THE COURT: All right. So in the contract
4 itself, which date is also the 18th, it says that
5 "Buyer wants to take advantage of the country club
6 equity incentive and must close by 3/31/15."

7 MR. POLETTTO: Correct.

8 THE COURT: So is the price increasing from
9 95 to 125, or is it 125, but there's an incentive
10 to have -- if someone closes by the end of March,
11 they will reduce it to 95?

12 MR. POLETTTO: It's increasing as of April 1st
13 by \$30,000.

14 THE COURT: So if I don't let this close on
15 the 31st because of the objections made to the
16 rush aspect of this, what happens to this
17 contract?

18 MR. POLETTTO: It will cost \$30,000 more and
19 the buyer has the right to cancel.

20 THE COURT: All right. Too bad. Motion is
21 denied.

22 Your notice is vastly inadequate, okay, and
23 I'm concerned that, for the record, that even the
24 PR really didn't know, and there's other things
25 that the PR didn't know that I have to sift out

1 about this transaction. It may be reasonable,
2 okay, the price, but because of what goes on in
3 this case, there needs to be notice.

4 And Eliot raised a good point. You know, if
5 he hears that there's a buyer for 1.1 million, he
6 then, or anyone else, can make an offer to match
7 that, not that he's going to do that, but they are
8 entitled to notice. And the problem here,
9 Mr. Rose, is I don't see how I can eliminate
10 notice here, and the notice is just inadequate.
11 It doesn't -- they are getting their copies of the
12 contracts today. That's when they just said they
13 got it.

14 MR. ELIOT BERNSTEIN: We don't have the right
15 one.

16 THE COURT: It's, apparently, the right one
17 because it refers to the -- to that.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: So, you know -- I mean, there's a
20 due process aspect of getting -- in a contested
21 case like this, where people want to look and see,
22 in dealing with the history of not you, but your
23 predecessors admitted to improper dealings with
24 things, they want to be able to look in and
25 they're -- you know, Eliot is going to demand

1 every page be analyzed and every leaf be
2 overturned because when Spallina and Tescher were
3 involved with this, a lot of bad things clearly
4 happened. Now, could that all wind up going
5 nowhere beyond Spallina and Tescher? The answer
6 is yes. You know, is there any other wrongdoing?
7 I haven't found it yet. I keep hearing about it,
8 but I haven't found it yet.

9 But this stuff has to be flushed out, and so
10 these buyers are going to have to -- I mean, I
11 can't rush this through in this court to try to
12 save the buyers -- the buyers -- \$30,000. Okay.
13 If you think that it's going to kill the deal,
14 kill the deal or, Mr. Poletto, take it out of your
15 commission, okay, if you want. So if I hear that,
16 okay, that doesn't even cure it because they want
17 notice, meaning you can tell them that you will,
18 not the trust, but you will pay that \$30,000. I'm
19 not telling you to do this, but I know what
20 realtors do to make deals go through. If they are
21 going to back out, and after notice is given, you
22 know, they are still willing to buy by the 20th,
23 because April 20th is now the closing date, but
24 for the rush part of this, so everyone is on
25 notice that is now the target date of this, okay?

1 So everyone has to do their due diligence by that
2 date, or then by that date I'll make a decision as
3 to allow this to be sold or not. So far, what I
4 heard, makes the price sound reasonable.

5 Eliot, when you say, but, Judge, why would
6 the value of this home keep on going down when
7 real estate is going up? The answer is, it is
8 what it is, unless you show me otherwise. They
9 have an appraisal that has an appraised value of
10 this close to the amount that they are selling it,
11 and the realtor explained appropriately about the
12 conditions of the home, and it's been on the
13 market for a long time, and so, you know, no one
14 is buying this, and it's not a good idea to let a
15 sale go that may not be able to be retrieved.
16 Because I'm not worried about what happens with
17 the consequences of this sale, in that, clearly,
18 if it takes place, this money goes into escrow,
19 that is the net proceeds to the trust, and cannot
20 be used for any purpose, can't be used for fees,
21 can't be used for costs. I mean --

22 MR. ROSE: I would a hundred percent agree
23 with that, Your Honor.

24 THE COURT: Right. Okay. So -- but, you
25 know, both -- I mean Miss Foglietta even was

1 concerned about the rush job of this -- did I
2 state that accurate -- being that the personal
3 property --

4 MS. FOGLIETTA: The personal property, we
5 haven't seen it.

6 THE COURT: So this has got to be flushed
7 out, and for \$30,000, you know, we can deal with
8 that and have the closing by April 20th.

9 MR. ROSE: Just for the record, just on the
10 notice issue --

11 THE COURT: Yeah.

12 MR. ROSE: -- I mean the trust document does
13 not require notice. The trustee is empowered to
14 buy and sell real estate without notice to
15 anybody. We fully intended to make disclosure,
16 and we did it. The dates here -- I mean, I
17 realize Your Honor is saying it's a short notice,
18 but the contract was signed. It wasn't even final
19 or binding until they did their inspection, but we
20 did get the notice out on Monday. The Affidavit
21 of Mr. Poletto was attached on Monday.

22 THE COURT: I'm not faulting -- it became a
23 rush because -- this would not be happening,
24 everyone concedes, but for what's going on at the
25 country club in the raise of the \$30,000. You

1 say -- your client's agreeing to that.

2 MR. ROSE: I wasn't saying no.

3 THE COURT: Your client is saying yes to
4 that.

5 MR. ROSE: It was also part of the
6 inspection, that the buyers had the right to
7 cancel, so they said we'll take it as is with
8 no -- you don't have to do anything, or give us
9 any money for anything that is broken or needs
10 fixed.

11 THE COURT: Don't change that. But if it's
12 just a question between the April 20th date and
13 March 31st of the 30,000, you folks can think of
14 something creative to keep this deal alive.

15 MR. ROSE: I don't think it would be fair --

16 THE COURT: I'm not making him --

17 MR. ROSE: Al's total commission I think
18 would be \$33,000, and then he's going to pay 30 of
19 it after he's marketed the property for --

20 THE COURT: Well, then, don't do that because
21 that's not reasonable. I'm not suggesting that
22 you do that. I wasn't even having in mind how
23 much your commission was.

24 MR. ROSE: What would you like us to do with
25 the buyers, advise them of what, we're going to

1 have another hearing to determine if the price is
2 adequate? I think --

3 THE COURT: I don't have -- I mean -- okay.
4 So I don't have any problem with the price, and
5 I've heard no evidence -- and this was a chance
6 for Eliot to present that, that there's a problem
7 with the price. The problem is is that he's
8 allowed to do other things, like review the
9 contract, and something else that he may want to
10 present, if he can, that makes it inappropriate to
11 have the sale at the 1.1 million, okay? But I'm
12 not -- I mean, there's nothing that I see that
13 suggests it. Eliot may present a witness who says
14 that the fair market value of this house should be
15 much more than 1.1 million, but I would need hard
16 core evidence of that. Not Eliot, he's not
17 qualified to do it; not Zillow, not Houzz. They
18 are not competent evidence to do that. You have
19 to have a hard core person to do that. And I
20 would weigh, then, that opinion, based upon the
21 fact that now there's an actual buyer who is going
22 to do an as-is cash contract. And so that's --
23 you know, cash is king, okay, from my point of
24 view. But I can tell you, if this deal goes down
25 the tubes, it's over your objection, and if you

1 wind up at the hearing coming up, having nothing
2 at all, then I'm going to take that into
3 consideration. Nothing substantial. Not things
4 that you say, Eliot, because you're in a zone that
5 you share with, I don't know who, but it's not
6 necessarily where I'm coming from. You know, you
7 see a lot of things that are wrong here that are
8 not necessarily legal wrongs, or wrongs that have
9 been proven, and so I'm stopping this deal because
10 you, Eliot, don't want it to go through, okay? It
11 has all of the remnants of something that could be
12 good for the trust. You don't want it. I'm not
13 going to forget that. So you said: I want a
14 chance to prove it's bad for the trust for various
15 reasons. I'm going to hold you to that proof.
16 True?

17 MR. ELIOT BERNSTEIN: Perfect.

18 Your Honor, can I --

19 THE COURT: I'm in the middle of a trial.
20 What? Go.

21 MR. ELIOT BERNSTEIN: You're talking to me in
22 a trial?

23 THE COURT: No. Another trial. That's what
24 all of these books are for.

25 MR. ELIOT BERNSTEIN: Can I ask him one

1 question?

2 THE COURT: Go ahead.

3 CROSS (JOHN POLETTO)

4 BY MR. ELIOT BERNSTEIN:

5 Q. Okay. Mr. Poletto, did you inform the
6 potential buyer of potential litigations that could
7 be -- that I've discussed with you about the property,
8 and that Ted is trying to be removed, and if Ted is
9 found to have acted fraudulently, that his removal
10 herein, it could cause clawbacks, lawsuits; the cost of
11 that could become --

12 MR. ELIOT BERNSTEIN: I'd like Your Honor to
13 consider bonding for any possible damage because
14 we have this rush and we're -- all of those
15 things.

16 BY MR. ELIOT BERNSTEIN:

17 Q. But that's my question. You've known about
18 litigation on this property for how long, since we
19 talked, over a year?

20 A. (Nods).

21 Q. You've been given information.

22 THE COURT: You're talking and he's not even
23 answering.

24 MR. ELIOT BERNSTEIN: He's answering. He's
25 shaking his head.

1 THE COURT: No. I'm not hearing anything.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Can you answer?

4 A. Ask me the question.

5 Q. Okay. Did you inform the potential buyers of
6 potential litigation you were knowledgeable about?

7 A. No.

8 Q. Was there a reason you didn't?

9 A. My job is to get the contract -- the property
10 in contract. I'm not in a position to try to scare
11 people away from buying a house we've been trying to
12 sell for almost three years. The objective here is to
13 sell the asset, not scare buyers away. So the answer
14 is absolutely no. My job is to get it in contract and
15 then you guys close it.

16 Q. So your profession doesn't require you to
17 fully disclose potential litigation?

18 A. Let me ask a question. Is there litigation
19 filed right now?

20 Q. Yes.

21 A. Was it prior to being filed?

22 Q. Yeah.

23 A. Okay. I haven't received a copy.

24 Q. I've given you information, we've had
25 conversations about the litigation that's pending;

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correct?

MR. ROSE: I'd object.

MR. ELIOT BERNSTEIN: Alan Rose --

MR. ROSE: I'd object.

THE COURT: Stop.

MR. ROSE: We're here to get you to order the sale approved. If you don't order the sale approved, it doesn't go forward.

THE COURT: The contract is still pending. I'm not negating the contract. You want -- what you wanted was a court order to allow the closing to take place by the 31st.

MR. ROSE: And to prohibit him from interfering.

THE COURT: I'm going to deal with that -- I'm going to deal with that second.

MR. ROSE: Because he --

THE COURT: You don't have to argue that, him interfering. I'm going to enter an order right now dealing with that subject.

MR. ROSE: As soon as you tell the buyers that there's going to be litigation to claw back the property, these are very wealthy people. They don't need the aggravation.

THE COURT: I don't need your help on this

1 issue.

2 MR. ROSE: I apologize.

3 THE COURT: So one part of my ruling is that,
4 because Eliot is objecting and says there's a good
5 faith basis for this sale not to go through
6 whereby the -- what's going to happen is there's
7 going to be a change in the asset structure of the
8 trust from property to cash. Eliot is objecting
9 to that.

10 All right. So, Eliot, I'm going to make this
11 clear, I'm going to right it. If the buyers here,
12 by telling me that the Pony Express told them that
13 there was litigation about this, I know it's
14 coming from you, okay? I am ordering you not to
15 discuss, not to disseminate, or not to give any
16 notice that you think needs to go to the buyers,
17 okay? And if I find out that the buyers find out
18 about the stuff that you just asked Mr. Poletto
19 about, I'm only going to look to you, and then you
20 and I are going to have issues, okay?

21 MR. ELIOT BERNSTEIN: I hear it.

22 THE COURT: Because you may think it's good
23 to do that huffing that you do to Mr. Poletto by
24 telling him all of that stuff that you think has
25 some merit, that I have never found to have any

1 merit yet, okay, so I haven't found the
2 conspiracy, I haven't removed Ted, I haven't found
3 that it matters who's trustee in order to go ahead
4 and sell this for the benefit of the trust. I
5 might wind up finding that all of the things
6 you're doing is harmful to the trust and the trust
7 beneficiaries, okay. I haven't gotten there yet
8 because that's why I'm trying to push this matter
9 through.

10 So we're going to take this one small step at
11 a time, but I'm ordering an injunction against you
12 not to contact the buyers directly or indirectly
13 with respect to any information concerning this
14 transaction. Understood?

15 MR. ELIOT BERNSTEIN: Yes. I've never
16 contacted any buyers.

17 THE COURT: But you're suggesting that they
18 need to know that.

19 MR. ELIOT BERNSTEIN: I'm suggesting if he
20 knew it.

21 THE COURT: But that's not the point.

22 MR. ELIOT BERNSTEIN: Okay. That's fine. I
23 understood what you said.

24 THE COURT: That's not your job.

25 MR. ELIOT BERNSTEIN: My next question was:

1 Did you get a lis pendens I filed in this matter?

2 THE COURT: Doesn't matter. I got it. They
3 are told that it's filed.

4 MR. ELIOT BERNSTEIN: So are the buyers aware
5 there's a lis pendens? I'm not allowed to ask
6 that?

7 THE COURT: No, you're not allowed to ask
8 that. I don't know who you gave notice to. If
9 you sent notice to the contract -- if you sent
10 notice of this lis pendens to a contract buyer,
11 you're going to be right back in court here so
12 quickly your head is going to ring.

13 MR. ELIOT BERNSTEIN: I'm not going to talk
14 to the contract buyer.

15 THE COURT: No, but I don't want you to send
16 something to them.

17 MR. ELIOT BERNSTEIN: I'm not going to send
18 anything to the buyer. I would never do that.
19 I'm not doing that.

20 THE COURT: Because, obviously, if there's a
21 sale --

22 MR. ELIOT BERNSTEIN: I'm assuring you, I am
23 assuring you on that.

24 THE COURT: -- because if we have a sale, the
25 lis pendens is going to go away. They can't clear

1 title. It can't be sold over that.

2 MR. ELIOT BERNSTEIN: Correct. Now, I don't
3 think I filed it properly in the county and
4 recorded it with the thing.

5 THE COURT: If you improperly file a lis
6 pendens, you're at risk for whatever it is you
7 did, so withdraw your lis pendens then, if that's
8 the case.

9 MR. ELIOT BERNSTEIN: I'm not quite sure I
10 filed it wrong. I'm pro se. We will have to get
11 to that. But the point was, you asked that
12 everything come to you in this case.

13 THE COURT: But you didn't do it with the lis
14 pendens.

15 MR. ELIOT BERNSTEIN: I did. I gave it to
16 you in October.

17 THE COURT: Well, yeah, but I didn't approve
18 it. I held it because I didn't order it being
19 filed. You did send it.

20 MR. ELIOT BERNSTEIN: In the meantime, all of
21 a sudden, we get alerted there's a pending sale.
22 That would have denied me the due process to file
23 a lis pendens properly.

24 THE COURT: No, no. All you had to do was --
25 he went ahead and gave notice because you can't

1 sell it without getting court approval, okay, and
2 so once he filed to get court approval, you had
3 notice, he gave you notice of the hearing.

4 MR. ELIOT BERNSTEIN: That's just the other
5 day.

6 THE COURT: That's when this all started.

7 MR. ELIOT BERNSTEIN: Well, I filed the lis
8 pendens first --

9 THE COURT: All right.

10 MR. ELIOT BERNSTEIN: -- prior to his --

11 THE COURT: So what do you want, Ted?

12 MR. TED BERNSTEIN: I know you have something
13 else pressing, but I'm concerned I don't
14 understand something Mr. Poletto said and I want
15 to make sure in court I'm clear.

16 THE COURT: Go ahead.

17 MR. TED BERNSTEIN: Did you say that there's
18 a chance the buyer backs out of this contract if
19 it's not done by March 31st, just walks away from
20 the deal?

21 MR. POLETTA: That's correct.

22 THE COURT: I didn't see that as a
23 contingency.

24 MR. POLETTA: I actually have another
25 document.

1 MR. ROSE: I haven't allowed my client to
2 sign the addendum because the addendum is -- they
3 had a chance to inspect or cancel. They exercised
4 their right, and said we will accept it as is if
5 it closes by March 31st. I have not let him sign
6 that because we -- I mean, I don't know that we
7 technically need court approval to sell property
8 in trust, but in this case, we wanted your
9 approval.

10 THE COURT: Right.

11 MR. ROSE: We were not going to do it
12 otherwise, sir.

13 THE COURT: It's one and the same.

14 MR. ROSE: If we don't sign that, then
15 there's no contract at all and the buyers are not
16 bound by anything, and ultimately what's going to
17 have to happen is we're going to have to lower the
18 asking price by \$30,000 to get these guys to go
19 forward.

20 THE COURT: For right now, subject to me
21 assessing the financial consequence of that to the
22 person who caused that sale not to go through, I
23 mean, that's what I reserve. But, Mr. Rose, part
24 of the problem is, it's like when I tell people
25 when they file emergency hearings, not everything

1 that seems to be important is an emergency. You
2 may have an important reason, and I think you do,
3 to try to sell this by the 31st. It may keep this
4 deal alive, and it may save someone \$30,000, but I
5 can't use that as a basis to deny the
6 beneficiaries the chance, now that we kind of
7 agree that they have a right to be involved in
8 this, to some degree, not contacting the buyers,
9 so there's a trade-off here in that. And so, you
10 know, if this was life or death, I would go for
11 life, but it's not life or death. This is a piece
12 of property. The property will just stay, if this
13 buyer backs out. If the buyer backs out, I'll
14 deal with that.

15 Ted, what else?

16 MR. TED BERNSTEIN: Your Honor, just to
17 clarify for me, what things can the beneficiaries
18 do to help bring whatever they want to bring to
19 bear to make this happen faster so that we, at
20 least, know what the expectations are?

21 THE COURT: That's a good question. The
22 answer is, now that the beneficiaries have notice,
23 okay, if they have an objection that's bona fide,
24 that's based upon a -- for example, here's a
25 potential bona fide basis. No matter what

1 testimony I've heard about the reasonableness of
2 this, the property is really worth more, and if it
3 was, that's something that you, Ted, would want to
4 know, and so let's say --

5 MR. TED BERNSTEIN: Yes.

6 THE COURT: -- I don't know who did that
7 appraisal, but a bona fide appraiser said, for
8 some reason -- this is James Hackett, okay -- and
9 some other MAI appraiser said, no way, you know,
10 Ted, this is a 1.4 or \$1.5 million deal, you may
11 want to know that.

12 MR. TED BERNSTEIN: Definitely.

13 THE COURT: So that's one thing, because I'm
14 told that it's not like the history of the
15 listings, as they have decreased and the appraisal
16 has been shared -- this appraisal was done as July
17 of 2014, so did anyone -- did the beneficiaries
18 get this appraisal?

19 MR. ROSE: No, Your Honor. In fact, I would
20 not -- I would like you, if you would, ore tenus,
21 to expand your injunction to prohibit the filing
22 in the public records of any of these exhibits,
23 including the appraisal and --

24 THE COURT: I'm holding on to the exhibits.
25 I'm not filing them.

1 MR. ROSE: He has a copy of them, though. He
2 now has the appraisal. I would not have advised
3 he be given a copy --

4 THE COURT: He can't -- Eliot can't file
5 anything without sending it to me first.

6 MR. ROSE: But he puts it on the Internet,
7 and we don't want the appraisal to be on the
8 Internet.

9 THE COURT: I've already ordered him not to
10 do anything directly or indirectly -- contact any
11 aspect of this transaction -- with the buyer.
12 That's direct or indirect.

13 MR. ROSE: We didn't share the appraisal
14 because, frankly, we were concerned it would be
15 public and that would defeat their chance of
16 selling it.

17 THE COURT: I'm not -- look, nothing is easy
18 here. It's not going to get easier until we can
19 get hearings where I can start to knock off some
20 of the issues, which is what I have been saying
21 now like a broken record.

22 At some point, either Eliot is going to be
23 sustained on his positions or he's going to be
24 overruled, but one way or the other, we can put
25 some of this stuff to rest. The problem is we're

1 doing all of this business with some of the metes
2 of the case still up in the air where I haven't
3 been able to adjudicate; the claims that Ted
4 should be removed; the claims that there's
5 wrongdoing beyond Spallina and Tescher, the trust
6 is not valid. I mean, give me a chance to rule on
7 that, because once I rule on that, then the matter
8 is over with on those and you'll know one way or
9 the other what to do.

10 Do you understand what I'm saying? I think
11 we have hearing time coming up. Let's use that,
12 you know, prioritize hearings on this case. So as
13 soon as we can, I'll give it to you.

14 MR. ROSE: I appreciate that.

15 We have one other thing, three seconds.

16 Miss Foglietta would like to go forward with
17 the inspection on Friday and I have no objection
18 to it. It had to be done at any point and she
19 already had it scheduled.

20 THE COURT: That's fine.

21 MR. ROSE: The only issue is, your prior
22 order was that Eliot could be present outside of
23 the house but not go physically into the house
24 during the inspection. We'd just like to maintain
25 that same ruling.

1 MR. ELIOT BERNSTEIN: No. Your Honor, you
2 just said in the last hearing --

3 MS. FOGLIETTA: Your Honor, if I could --

4 THE COURT: Hold on. It's her motion.

5 MS. FOGLIETTA: If I could, I want to clarify
6 a few things because we went so quickly through
7 it, and I just want to bring to Your Honor's
8 attention, if I may approach, an order that you
9 prior entered on this, on Mr. Brown as curator,
10 his motion, where you capped the price of the
11 inspection at \$500 for Mr. Hittel to do it and
12 then you included language that Ted and Eliot
13 could be there, but only could be outside.

14 So what my petition has, which is directly
15 under that order I've just handed you, Judge, is
16 we're actually asking for a few things, and I want
17 to address something Mr. Rose brought up outside
18 to me, too, that I just confirmed with
19 Mr. O'Connell. We're asking for an appraisal, an
20 inspection, and to take possession and move the
21 property in the house. Now, when Mr. Hittel
22 originally agreed to that \$500, that was if things
23 were not boxed in boxes in the house. We have
24 since found out that there are. He had said
25 previously, if things are boxed, now I need an

1 assistant and it's not going to cost \$500.

2 So what I am seeking is to have Hall and
3 Hall, a different appraiser, actually do this, not
4 Mr. Hittel, at a rate of \$125 an hour, and also to
5 get him an assistant at a rate of \$100 an hour.
6 So that's the first thing.

7 THE COURT: And the tasks these people will
8 undertake is what?

9 MS. FOGLIETTA: To inspect the property
10 that's currently there because there's been
11 allegations some of the property is missing; to do
12 another appraisal because there's been allegations
13 that the first appraisal was done incorrectly.

14 THE COURT: Appraisal of the personalty?

15 MS. FOGLIETTA: Yes, Judge.

16 THE COURT: Let me ask you something. This
17 is being done this way in connection with the sale
18 of the property?

19 MS. FOGLIETTA: Well, we had always planned
20 on filing another motion because we found out
21 Mr. Hittel couldn't do the appraisal -- or the
22 inspection -- excuse me -- that you ordered for
23 \$500 and now we've just, you know, kind of brought
24 it to the forefront here because of the sale of
25 the property. But, either way, it needs to get

1 done. It's always been something that's on our
2 plate.

3 THE COURT: So inside this house is what that
4 belongs to the estate?

5 MS. FOGLIETTA: Personal property of the
6 decedents. Furniture -- I haven't seen it myself,
7 but I believe it's furniture, things that are
8 boxed, all sorts of trinkets and things, but the
9 way that I understand it, it's boxed, tangible
10 personal property, and also personal property
11 that's just outside.

12 THE COURT: And none of that is being sold
13 with the unit; is that true?

14 MR. POLETTO: Correct.

15 MS. FOGLIETTA: That's what I have been told.
16 I haven't seen the contract.

17 THE COURT: So everything, then, other than
18 things that are not to be detached, is going to
19 leave there and go to the estate, is that the
20 idea?

21 MS. FOGLIETTA: Yes.

22 MR. ROSE: It is. I would suggest, if
23 there's not a closing, you don't empty the house.

24 THE COURT: Okay. I understand that.

25 MR. ROSE: There's two different issues.

1 They can do their inspection. I have no problem
2 with that.

3 THE COURT: Okay.

4 MR. ROSE: And we understand there's an
5 increased cost. I don't believe they should do
6 another reappraisal.

7 THE COURT: Well, I don't know that I need an
8 appraisal now. If you want to, in anticipation
9 that there's going to be a closing and that the
10 items of personalty are going to leave there and
11 go somewhere else, and where will be at the
12 direction of the PR; you'll say where you want
13 it -- you know, the idea of having an appraisal is
14 something we can wait on because -- I mean, the
15 items are in the house now and ultimately they
16 will be taken out of the house.

17 MS. FOGLIETTA: The only reason we were
18 asking that is because we have to have Hall and
19 Hall already go to the house to do the inspection,
20 and since he will already be there charging the
21 same rate, we figured we might as well just have
22 the appraisal all done at the same time rather
23 than having him have to go back and us come back
24 on another motion, you know, and go through that
25 whole thing, so if we could just do it all at the

1 same time --

2 THE COURT: How much is this going to cost,
3 though?

4 MS. FOGLIETTA: It depends how much is in the
5 house. I don't know. It could take one day, it
6 could, at the most, take two days. From what I've
7 been told from Mr. Rose, there's not all that much
8 there. I'm hoping it will be one day, but it's
9 hard for me to say without actually having --

10 THE COURT: Well, one day and between the two
11 people, that's \$250 an hour, so eight hours, that
12 now could be, you know --

13 MS. FOGLIETTA: And if he's got to go there,
14 anyway, to do the inspection, he might as well do
15 the appraisal.

16 THE COURT: The appraisal is included in that
17 time frame.

18 MS. FOGLIETTA: That's right, Judge, yes,
19 it's for both. That's the rate we were quoted for
20 both. So I would ask that, you know, so that he
21 doesn't have to go back and incur additional fees,
22 so we don't have to file another motion, incur
23 additional fees, that we could do the inspection,
24 the appraisal, and then take possession and
25 store --

1 THE COURT: Well, not possession, because it
2 needs to sell with furniture in it. That makes it
3 more --

4 MS. FOGLIETTA: We could hold off on that.
5 That was only in anticipation of the sale, Judge,
6 that portion of the motion.

7 THE COURT: Okay. So inspect and appraise.
8 Approved to inspect, appraise, but not remove.

9 MS. FOGLIETTA: And then the next thing,
10 Judge, part of this motion was inspection of some
11 office property, which we briefly spoke about
12 yesterday. Mr. Rose said there's nothing there,
13 but I just wanted to be clear that Your Honor
14 still, you know, allows us to go ahead and inspect
15 it and appraise that.

16 THE COURT: You're allowed to inspect the
17 property under the rules, true? Yes.

18 MS. FOGLIETTA: And then Mr. Rose agreed
19 yesterday that the trust would pay for, and Eliot
20 had no objection, the inspection and appraisal of
21 the home -- of the property in the St. Andrews
22 home and we would ask for the same thing for the
23 office stuff, although it seems like there might
24 be nothing there. There may be no cost associated
25 with it.

1 THE COURT: Well, if you have an assistant,
2 if there's nothing in there, that cost could be
3 minimized by someone verifying there's nothing in
4 there.

5 MS. FOGLIETTA: That's correct, Judge.

6 THE COURT: That sounds like it's a quick
7 thing.

8 MS. FOGLIETTA: And then two other things.
9 The prior order that you have in front of you did
10 limit Ted and Eliot from going in, and then Your
11 Honor made -- whether it was a ruling or not, I
12 don't know -- but you made a statement at
13 yesterday's hearing that Eliot was allowed in and
14 was allowed to video it, so I just wanted Your
15 Honor to know there was a prior order that you
16 entered and I wanted to make sure that the estate
17 wasn't doing anything contrary to either your oral
18 statement yesterday or written ruling prior.

19 THE COURT: Let me look and think about this.
20 Okay. I'm going to reverse myself.

21 Eliot, you're not going in.

22 MR. ELIOT BERNSTEIN: Your Honor, can I
23 explain why you made that decision?

24 THE COURT: I'm leaving everything in there.

25 MR. ELIOT BERNSTEIN: This is very important.

1 THE COURT: What? Go ahead.

2 MR. ELIOT BERNSTEIN: The reason you made
3 that decision yesterday is because Joi found out
4 yesterday that -- not the only thing in the house
5 is supposed to be my dad's house stuff, 4,000
6 square feet of furniture and possessions of my
7 mother's condominium are also supposed to be in
8 that house. You made a court order to inspect
9 those items at that property. We just found out
10 yesterday from Joi that there are claims that
11 Mr. Rose has, or Ted, somebody has sold, or
12 otherwise moved properties.

13 THE COURT: So what's there to inspect?

14 MR. ELIOT BERNSTEIN: Well, to find out
15 what's missing from --

16 THE COURT: Here's the thing: The appraiser
17 that goes in is going to not look at title, but
18 look at items in the house. They will photograph
19 and prepare a report of what's in there. They are
20 not going to remove it. It is staying in there,
21 so I'm not sure what you're getting at.

22 MR. ELIOT BERNSTEIN: They are saying nothing
23 is left.

24 THE COURT: Nothing left of what?

25 MR. ELIOT BERNSTEIN: Of the personal

1 property.

2 THE COURT: Well, no, there is personal
3 property.

4 MR. ELIOT BERNSTEIN: Of Si, not of Shirley.

5 THE COURT: But, see, the appraiser is not
6 determining title. He's going to determine what's
7 in there and what it's worth.

8 MR. ELIOT BERNSTEIN: Well, the Court was
9 told one thing. He had no right to sell personal
10 property, meaning that was in their custody.

11 THE COURT: Okay. I'm not dealing with -- if
12 something is sold, I'll deal with that.

13 MR. ELIOT BERNSTEIN: I'm a beneficiary. Why
14 would you preclude me from the inspection?

15 THE COURT: Because I want to. I think
16 you'll be disruptive.

17 MR. ELIOT BERNSTEIN: I won't.

18 THE COURT: I'm ruling on that.

19 MR. ELIOT BERNSTEIN: I promise you not to be
20 disruptive in any way.

21 THE COURT: The answer is no. You can be
22 present, you can stay outside, you can watch the
23 appraiser go in. If he wants to speak to you, he
24 can, but you can't make him. He's going to look
25 at whatever is in there, he inventories, he

1 photos, he does all of that, and then it's
2 available to be looked at at some point later on.
3 And I don't want this being a show, and that's why
4 I'm changing my mind.

5 MR. ELIOT BERNSTEIN: Here is the other part.
6 If we're going to do this evaluation of the house,
7 Mr. Poletto, in his statement says that -- in his
8 affidavit or something says there's \$300,000 of
9 damages and remodeling costs and it's in -- well,
10 I was with my dad a lot at his house before he
11 died. The thing was immaculate, perfect, just had
12 an elevator put in. I don't know the cost.

13 THE COURT: What's your point?

14 MR. ELIOT BERNSTEIN: The house wasn't
15 crumbling apart like it's being portrayed. I want
16 to know: Did they rip out the copper? Is the
17 wall missing?

18 THE COURT: You have an inspector who did an
19 appraisal and went in.

20 MR. ELIOT BERNSTEIN: I haven't looked at
21 that yet.

22 THE COURT: He describes the condition and
23 there's --

24 MR. ELIOT BERNSTEIN: If I'm going to get
25 another inspector, or possibly a second opinion,

1 I'd sure like to go in.

2 THE COURT: Well, if -- not you. If you make
3 a bona fide motion to have it inspected by a bona
4 fide appraiser, I might let that person in. Maybe
5 there won't even be an objection on their side.
6 Because no one -- an appraiser is not going to
7 move stuff around. They are going to look, take
8 pictures. You know, that's the problem. They
9 don't want you in there.

10 MR. ELIOT BERNSTEIN: So they are going to --
11 they are going to take pictures. Can Joi take
12 video, possibly?

13 THE COURT: Well, I'm not telling them how to
14 do their job.

15 MR. ELIOT BERNSTEIN: So there will be photo
16 evidence.

17 THE COURT: We'll see where it goes, but for
18 what you want to accomplish, you need to do it
19 through separate motions, if you think there is
20 something in there, but why don't you wait and see
21 what, at least, is reported about being in the
22 house and make up your mind what you want to do.

23 MS. FOGLIETTA: Judge, I'll use the same
24 language from previous order.

25 THE COURT: Yes.

1 MS. FOGLIETTA: And the very last thing,
2 which shouldn't take long, is we need \$500 from
3 the trust to put up front as an initial deposit to
4 get this thing rolling tomorrow so I would ask
5 that as part --

6 THE COURT: Any objection?

7 MR. ROSE: There's no objection. One
8 clarification. I personally am not paying any of
9 this. Under the statute that allows the personal
10 representative to request money from a revocable
11 trust, we've agreed, for this purpose only, we'll
12 advance the costs. I'll give her a check for \$500
13 today from our trust account.

14 THE COURT: Thanks. Bye.

15 MR. ROSE: Thank you for your time.

16 THE COURT: No problem. I need to get to my
17 trial. Take this stuff back, please. I'm giving
18 you the exhibits back, I'm not taking them.

19 MR. ROSE: I'll hold them.

20 THE COURT: Get me that order, make sure
21 Eliot doesn't contact this buyer directly or
22 indirectly.

23 MR. ROSE: When should we set another
24 hearing?

25 THE COURT: We have a closing now set for

1 April 20th so, Eliot, you need to do your due
2 diligence. If you're going to want something to
3 be done, set it so I can hear it before the 20th.
4 So if you want to file something, get me what you
5 want to file, don't file it, I'll look at it, I'll
6 give you a hearing date before the 20th, if it's
7 bona fide. Otherwise, they are going to look
8 forward to selling this on the 20th.

9 MR. ELIOT BERNSTEIN: Can I, right now,
10 schedule this hearing to continue so I can deal
11 with the legality of if this is a legal sale? I
12 mean, we're going to have to deal -- I don't care.
13 If the price is right -- look, Your Honor, if the
14 price is right, I'm all for it, but if the deal is
15 going to put it into a legal quagmire of fraud,
16 possibly, and make decisions that lead us down
17 that path, I think I have to have a hearing that
18 continues this hearing to determine if the trustee
19 is acting within the statutes. It's real simple.
20 If he's not, then whether the price is good or not
21 isn't the key, the key is the statutes aren't
22 being followed. I don't want to have to bond
23 people, but, you know, obviously if we're going to
24 take a risk of violating statutes to get a sale
25 done because there's a buyer who just popped out

1 of the woodwork today --

2 THE COURT: Okay. But I can't give you a
3 hearing right now. I've got to start my trial.
4 If you file something, I'll get you a hearing.

5 MR. ELIOT BERNSTEIN: So a continuation of
6 this hearing?

7 THE COURT: Or something new. They are
8 still -- right now I know the sale is for
9 April 20th. They are going to come in before then
10 to get an order that actually allows them to close
11 on that date.

12 MR. ROSE: Or I will advise you that they
13 canceled. We'll keep you posted.

14 THE COURT: Or they have canceled. One of
15 the two. Okay. Bye.

16 MR. ELIOT BERNSTEIN: Thank you.

17 MS. FOGLIETTA: Judge, would you like me to
18 write this up and send it to you?

19 THE COURT: Yeah. I don't have time to do
20 that now. Thanks.

21 (The hearing was concluded at 2:10 p.m.)
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CERTIFICATE OF REPORTER

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, APRIL Y. SEGUI, Registered Professional Reporter, Florida Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 16th day of April, 2015.

April Y Segui



APRIL Y. SEGUI, RPR, FPR

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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA,

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

TRANSCRIPT OF PROCEEDINGS BEFORE
HONORABLE HOWARD COATES

DATE: June 4, 2015

TIME: 4:10 p.m. - 4:20 p.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
3 3615 W. BOYNTON BEACH BOULEVARD
4 BOYNTON BEACH, FL 33436
5 By: JEFFREY ROYER, ESQ.

6 APPEARING ON BEHALF OF TED BERNSTEIN:

7 PAGE, MRACHEK, FITZGERALD ROSE
8 KONOPKA & DOW, P.A.
9 505 SOUTH FLAGLER DRIVE, SUITE 600
10 WEST PALM BEACH, FL 33401
11 By: ALAN B. ROSE, ESQ.

12 APPEARING ON BEHALF OF THE PR:

13 CIKLIN LUBITZ
14 515 N. FLALGER DRIVE, 20TH FLOOR
15 WEST PALM BEACH, FL 33401
16 By: BRIAN M. O'CONNELL, ESQ.

17 APPEARING ON BEHALF OF MOLLY SIMON, ET AL:

18 JOHN P. MORRISSEY, ESQ.
19 330 CLEMATIS STREET, SUITE 213
20 WEST PALM BEACH, FL 33401

21 ELIOT I. BERNSTEIN, Pro se

22 ALSO PRESENT: CANDICE BERNSTEIN

23 BE IT REMEMBERED, that the following
24 proceedings were taken in the above-styled cause before
25 the Honorable HOWARD COATES, at the Palm Beach County
Courthouse, 3188 PGA Boulevard, Room 3, in the City of
Palm Beach Gardens, County of Palm Beach, State of
Florida, on June 4, 2015, to wit:

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Good afternoon. You may be
4 seated.

5 MR. ROSE: Good afternoon, Your Honor.

6 MR. ELIOT BERNSTEIN: Good afternoon.

7 THE COURT: All right. We have the matter of
8 Estate of Simon Bernstein before the court this
9 afternoon.

10 The first motion that I had was a motion
11 to stay distribution of estate assets pending
12 satisfaction of all creditors claims. And then
13 I see that there was also an amended notice of
14 hearing for a multitude of different petitions.

15 So why don't we start out with having
16 counsel enter their appearances and then we'll
17 get going.

18 MR. O'CONNELL: Brian O'Connell, Your Honor.
19 I'm the personal representative of the estate.

20 MR. ELIOT BERNSTEIN: Eliot Bernstein, pro
21 se.

22 MR. MORRISSEY: John Morrissey here on behalf
23 of four adult grandchildren of the decedents,
24 Molly Simon, Alexander Bernstein, Michael
25 Bernstein and Eric Bernstein.

1 MR. ROSE: Good afternoon, Your Honor. Alan
2 Rose on behalf of Ted S. Bernstein as successor
3 trustee of the Simon Bernstein Trust, which is the
4 beneficiary of the estate.

5 THE COURT: Okay.

6 MR. ROYER: Your Honor, I'm Jeff Royer. I am
7 with Peter Feaman's office. We represent William
8 Stansbury, who's an interested person and a
9 substantial claimant of the estate of Simon
10 Bernstein.

11 THE COURT: So you're actually the movant on
12 the first motion I talked about then.

13 MR. ROYER: We are. Your Honor, I don't know
14 that we noticed for today, but, yes, it's -- it is
15 a motion that we filed.

16 THE COURT: Oh, that's the motion that I had
17 for hearing.

18 So anyway, who wants to go first in terms
19 of the pending motions because it would
20 probably be helpful to have someone kind of
21 give me an overview of who the players are.

22 MR. ROSE: Can I just raise one issue before
23 we start the hearing?

24 THE COURT: Sure.

25 MR. ROSE: Just because it's -- I sent a

1 letter to the court advising you that Mr. Eliot
2 Bernstein and his relationship to the Proskauer
3 firm, which you were employed at one time.

4 THE COURT: Yeah, I got that letter. I
5 reviewed it. Did you copy everybody else on the
6 letter?

7 MR. ROSE: I did.

8 THE COURT: All right. The letter raised an
9 issue of whether I, as the judge, should consider
10 disqualification of myself because of my prior
11 employment with Proskauer Rose, which was
12 approximately 15 years ago.

13 Once I received that letter, I looked into
14 the JEAC opinions regarding how far back the
15 judges normally go. And, normally, it's a one
16 to two year period that you look back in terms
17 of automatic recusal.

18 So based on that, I'm not going to sua
19 sponte disqualify myself from this matter. I
20 really have no -- I haven't had contact with
21 Proskauer in any meaningful way in 15 years,
22 so...

23 MR. ROSE: I was only raising it so that
24 Mr. Eliot Bernstein was aware of that. And if he
25 has any objection -- I don't have any objection.

1 I wanted to let -- make sure that he was aware of
2 that and would have an opportunity to --

3 THE COURT: I appreciate it.

4 MR. ROSE: -- object now if he wishes to.

5 THE COURT: Yeah. And I can -- if I can
6 find. I have it here, I'll let everyone know
7 which opinion I was relying on when I looked at
8 that.

9 Yeah, just to be more specific on the note
10 that was sent to me -- what was the name of the
11 corporate entity that they said was represented
12 by Proskauer?

13 MR. ROSE: It was an entity called Iviewit,
14 which engaged in a lengthy multi-year or
15 decade-long battle with that law firm.

16 THE COURT: With Proskauer or Proskauer was
17 representing one of the parties?

18 MR. ROSE: With Proskauer. Proskauer, I
19 think, represented the -- Proskauer represented
20 Simon Bernstein while he was alive and drafted
21 some documents in 2000 that would have been
22 superceded by 2008 documents. And Proskauer also
23 represented the company that Eliot Bernstein
24 started called Iviewit.

25 THE COURT: After 2000?

1 MR. ROSE: I think there was litigation -- it
2 was during the '90s.

3 THE COURT: Because I left -- I left the firm
4 in 2000, I believe, if my recollection is correct.

5 MR. ELIOT BERNSTEIN: I think I know you
6 from there. Did you work at the one in Boca?

7 THE COURT: Yeah, I have no recollection of
8 having represented Iviewit, though.

9 MR. ELIOT BERNSTEIN: Well, actually, which
10 department were you with?

11 THE COURT: Litigation.

12 MR. ELIOT BERNSTEIN: I was right across the
13 hall from your office, do you recall?

14 THE COURT: No.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: This is going back 15 years.

17 MR. ELIOT BERNSTEIN: Okay. And --

18 MR. ROSE: Just for the record, if I could
19 finish. I wasn't suggesting that you did anything
20 wrong. I was just bringing it to your attention.
21 And, also, I do think, though, all the parties
22 would appreciate it if Mr. Eliot Bernstein has an
23 objection based upon your Proskauer relationship
24 and his relationship to that firm, which is --
25 that he would raise it if he wanted to, or

1 otherwise we're fine. Because I don't want to
2 have a problem and get recusal motions coming down
3 the road.

4 THE COURT: Yeah, and I never take those
5 things personally. It prompted me to go to the
6 Judicial Ethics Advisory Opinions and look at what
7 the standard is. Because if there is a legal
8 basis that I would need to disqualify myself, I
9 would absolutely do it. But going back 15 years,
10 based on the JEAC opinions, I didn't view there as
11 being any legal requirement that the court would
12 disqualify itself.

13 MR. ELIOT BERNSTEIN: There might be another
14 issue. I think Proskauer is a counter-defendant
15 in one of the estate counter complaints in this
16 matter.

17 THE COURT: Is this matter before me?

18 MR. ELIOT BERNSTEIN: Yes, sir.

19 THE COURT: Is that accurate?

20 MR. ROSE: Well --

21 MR. O'CONNELL: I'm not sure.

22 MR. ROSE: I don't want to be the spokesman
23 for the whole world. But I think starting in the
24 '90s Proskauer represented this company that
25 Mr. Eliot Bernstein called Iviewit. And he claims

1 that Proskauer stole his patents worth billions or
2 trillions of dollars. And then there was
3 litigation that started in maybe 2000 or 2001 and
4 continued through State Court, New York Federal
5 Court, and I believe even in this action he may
6 have -- he has filed a counterclaim and if he's
7 representing that he joined Proskauer as a -- he
8 also sued most of the partners of the firm at the
9 time.

10 THE COURT: Well, my --

11 MR. ROSE: Again, I'm just --

12 THE COURT: Well, I view the issue of
13 Proskauer attorneys being in front of me somewhat
14 differently than the firm Proskauer being in front
15 of me as a party. So if what I'm hearing is that
16 it's not just a situation where Proskauer
17 attorneys are in front of me, but Proskauer itself
18 is a party to the action, then -- and that's an
19 issue that Mr. Bernstein is raising -- then the
20 court would probably view that slightly
21 differently because in that situation because they
22 are a party and I was a partner, even though it
23 goes back 15 years -- I'd have to look at the JEAC
24 opinions, there may be a legal basis at that
25 point. And I don't know if you're sitting right

1 here now -- there may be a legal basis for me to
2 disqualify myself if Proskauer is actually a party
3 in this proceeding to where I would be asked to
4 make rulings, you know, for or against them. So
5 where -- they are a party in this -- because all I
6 have in front of me right now is an estate
7 proceeding.

8 MR. ROSE: Right. Well, there's five
9 related -- five or six related cases.

10 Judge Colin, I think after denying the second or
11 third motion to disqualify, recused himself and
12 the cases were just recently transferred. In one
13 of the cases there is a counterclaim. It has been
14 stayed because Mr. Bernstein is not allowed to
15 file any papers without getting permission from
16 the judge first.

17 MR. ELIOT BERNSTEIN: Not only
18 Mr. Bernstein, you too.

19 THE COURT: All right. Sir, don't interrupt.

20 MR. ELIOT BERNSTEIN: I'm sorry.

21 MR. ROSE: The counterclaim is stayed. And I
22 don't know if Proskauer is a party, but if
23 Mr. Bernstein represents to the court that they're
24 a party, then I would take it --

25 THE COURT: You know, the standard for a

1 motion to recuse is -- the objective standard is a
2 party reasonably in fear that he may not receive a
3 fair trial. And even at 15 years is remote -- and
4 I think the cases say that. I'm somewhat
5 sympathetic to a party that would have some
6 concern where a judge who was a former partner at
7 a previous firm is being asked to rule on issues
8 affecting that firm.

9 So I'm -- if you're raising the issue,
10 Mr. Bernstein, then I'm -- what I'm telling you
11 is at this point I would recuse myself, if
12 there was a motion filed. If you are not
13 raising the issue, then, you know, it's a
14 remote issue, but, you know, it's something
15 that -- it's in the eyes of the beholder to
16 some extent. Are you in reasonable fear of not
17 getting a fair hearing and trial on this
18 matter?

19 MR. ELIOT BERNSTEIN: I'm not certain yet.
20 That's kind of why I'm here today.

21 THE COURT: The thing is you have to move
22 quickly because you have to -- you have to do it
23 within 10 days of the date you become aware of the
24 information. And what I told you today is that I
25 was a -- you've probably already known it -- but I

1 was a former partner at Proskauer Rose.

2 MR. ELIOT BERNSTEIN: Well, your bio is
3 confusing on the Internet. Some have you there --

4 THE COURT: Maybe I'll have to fix that.

5 MR. ELIOT BERNSTEIN: And then your -- well,
6 you should fix the court one because it has no
7 biography.

8 THE COURT: The court ones, they don't give
9 that kind of -- it's not like private practice.

10 MR. ELIOT BERNSTEIN: Here's one of the
11 issues I want you to consider because, you know,
12 it's going to take me time to consider all the
13 factors here that I'm learning now. One of the
14 issues is that the technologies that I invented
15 that I allege that Proskauer stole --

16 THE COURT: Here's the thing. I don't really
17 want you to talk to me about anything regarding
18 the substance of this matter until we sort through
19 this recusal issue.

20 MR. ELIOT BERNSTEIN: This is what I'm
21 talking about.

22 THE COURT: Here's the problem. If I make
23 rulings today and you file a motion within 10
24 days, every ruling I made today is subject to
25 rehearing by the new judge. So it's a waste of

1 time to proceed and hear any motions if you're in
2 good faith telling me you're going to file a
3 motion to recuse.

4 MR. ELIOT BERNSTEIN: I'm not saying that.
5 But I don't know. But I am saying for you to
6 consider that the technologies are owned partially
7 by my father, 30 percent of the interests in them.
8 And that will also, I believe, bring Proskauer
9 into this matter as well. And so, you know, I
10 believe -- like I have obligations, you have
11 obligations under the judicial canons.

12 THE COURT: Is Proskauer a party now?

13 MR. ELIOT BERNSTEIN: Yeah.

14 THE COURT: All right. I'm going to sua
15 sponte disqualify myself from this matter. Had I
16 known that Proskauer was a party, I would have
17 done it when I reviewed it the first time. But I
18 understood it was just they were attorneys in the
19 case.

20 So that means, unfortunately, there's
21 going to have to be another assignment of a
22 judge in this matter.

23 Sir, at this point I don't really care if
24 you file a motion to recuse. You raised enough
25 for me that I'm going to sua sponte disqualify

1 myself.

2 MR. ROSE: Thank you, sir.

3 MR. O'CONNELL: Thanks, Your Honor.

4 MR. ELIOT BERNSTEIN: Thank you, sir.

5 THE COURT: Thank you.

6

7

8 (Thereupon, the proceedings were

9 concluded at 4:20 p.m.)

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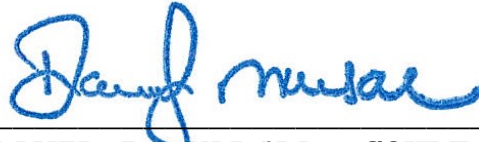
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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 29th day of February, 2016.



DAVID L. MARSAA, COURT REPORTER

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198 - VOL 1

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1 P R O C E E D I N G S

2 - - -

3 THE COURT: We're here on the Bernstein case.
4 Everybody ready to go?

5 MR. ROSE: Good morning, Your Honor. Yes.
6 Alan Rose on behalf of the plaintiff, Ted S.
7 Bernstein, as successor trustee.

8 THE COURT: Okay.

9 MR. ROSE: And with me is my partner, Greg
10 Weiss. May not be for the whole trial, but he is
11 with us for the beginning.

12 THE COURT: Okay. Well, great. Thanks for
13 coming.

14 And who's on the other side?

15 MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

16 THE COURT: Okay. You're not going to have
17 any counsel? Who's with you at the table?

18 MR. BERNSTEIN: That's my lovely wife,
19 Candice.

20 THE COURT: All right. And why are you at the
21 table?

22 MR. BERNSTEIN: That's one of the questions I
23 would like to address. I'm here individually.

24 THE COURT: Right.

25 MR. BERNSTEIN: And I was sued individually.

1 But I'm also here on behalf, supposedly, of my
2 minor children, who aren't represented by counsel.
3 And I'm sued as a trustee of a trust that I've
4 never possessed.

5 THE COURT: Are you asking me a question?

6 MR. BERNSTEIN: Yes.

7 THE COURT: What's the question?

8 MR. BERNSTEIN: Well, my children are being
9 sued.

10 THE COURT: What's the question?

11 MR. BERNSTEIN: And I was sued as their
12 trustee, but I'm --

13 THE COURT: Stop, please.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: I would love to talk with you all
16 day --

17 MR. BERNSTEIN: Okay.

18 THE COURT: -- but we're not going to have
19 that happen.

20 MR. BERNSTEIN: Okay.

21 THE COURT: This is not a conversation. This
22 is a trial. So my question is, What is your
23 question? You said you had a question.

24 MR. BERNSTEIN: I tried to get counsel for my
25 children who was willing to make a pro hoc vice --

1 THE COURT: When will you ask me the question?

2 Because this is all --

3 MR. BERNSTEIN: Well, I'd like to stay the
4 proceeding.

5 THE COURT: Okay. The request for a
6 continuance is denied. Thank you.

7 MR. BERNSTEIN: Have you read the filing I
8 filed? Because my children are minor --

9 THE COURT: Was that your question?

10 MR. BERNSTEIN: Well, my children are
11 minors --

12 THE COURT: Please stop.

13 MR. BERNSTEIN: -- and they're not represented
14 here.

15 THE COURT: What is your name again, sir?

16 MR. BERNSTEIN: Eliot Bernstein.

17 THE COURT: Okay. Mr. Bernstein, I'll be
18 courteous, unless it doesn't work; then I'll be
19 more direct and more aggressive in enforcing the
20 rules that I follow when I conduct trials.

21 I've asked you several times if you had
22 questions. You finally asked me one, and it was,
23 Did you read my filing? No, I did not. You asked
24 for a continuance. I have denied that because it's
25 untimely.

1 Now I'm turning back to the plaintiff, and
2 we're going forward with this trial. That is one
3 day set on my docket. We're going to have this
4 trial done by the end of the day. You'll have half
5 the time to use as you see fit; so will the other
6 side. I'll not care if you waste it, but I'll not
7 participate in that. Thank you.

8 Now, from the plaintiff's side, what is it
9 that the Court is being asked to decide today?

10 MR. ROSE: Before I answer, could
11 Mr. Morrissey make an appearance, sir?

12 THE COURT: All right.

13 MR. MORRISSEY: Yes, I'm here on behalf of
14 four of the defendants, Judge, four adult
15 grandchildren, Alexandra Bernstein, Eric Bernstein
16 Michael Bernstein and Molly Simon, all of whom have
17 joined in the plaintiff's complaint today.

18 THE COURT: Okay. Last time I'll ask this
19 question of the plaintiff. What is it that I'm
20 asked to decide today?

21 MR. ROSE: We are asking you to decide whether
22 five testamentary documents are valid, authentic
23 and enforceable. And that is set forth in count
24 two of the amended complaint in this action. The
25 five documents are a 2008 will of Shirley

1 Bernstein, a 2008 trust of Shirley Bernstein, and
2 an amendment by Shirley Bernstein to her 2008
3 trust.

4 THE COURT: When was the amendment?

5 MR. ROSE: Amendment was in November of 2008.

6 THE COURT: All right. So there's also a 2008
7 amendment?

8 MR. ROSE: Yes, sir. In fact, I have a -- I
9 don't know if you can read it, but I did put up
10 here on the -- there are seven testamentary
11 documents. We believe five of them to be valid and
12 operative, and two of them to have been with --
13 revoked by later documents.

14 So for Shirley, there are three documents that
15 count two seeks you to determine are valid,
16 authentic and enforceable according to their terms.

17 And for Simon Bernstein, he has a 2012 will,
18 and a 2012 amended and restated trust agreement.
19 And we're asking that these five documents be
20 validated today.

21 There also is a 2008 will and trust that
22 you'll hear testimony were prepared, but have been
23 revoked and superseded by later documents.

24 THE COURT: Does everybody agree that Simon's
25 2008 will and trust are invalid or is there some

1 claim that they're valid?

2 MR. ROSE: I can't answer.

3 THE COURT: All right. I'll ask.

4 Are you claiming that the Simon Bernstein 2008
5 will or 2008 trust are valid, or do you agree that
6 they are invalid?

7 MR. BERNSTEIN: Well, I individually disagree.

8 THE COURT: Okay. Thank you.

9 MR. BERNSTEIN: And my children --

10 THE COURT: I just wanted to know --

11 MR. BERNSTEIN: -- aren't represented by
12 counsel, so they can't have an opinion --

13 THE COURT: Okay.

14 MR. BERNSTEIN: -- even though they're parties
15 to the case.

16 THE COURT: Okay. Like I say, you can waste
17 all your time you want. I won't object to it, but
18 I won't participate in it.

19 You can put on your first witness.

20 MR. ROSE: Thank you. Plaintiff will call
21 Robert Spallina.

22 Thereupon,

23 (ROBERT SPALLINA)

24 having been first duly sworn or affirmed, was examined
25 and testified as follows:

1 THE WITNESS: I do.

2 MR. ROSE: May I approach, Your Honor?

3 THE COURT: Sure. All approaches are okay.

4 MR. ROSE: Okay. I brought for Your Honor --
5 would you like a book instead of the exhibits?

6 THE COURT: Nothing better than a huge book.

7 MR. ROSE: We may not use all of them, but
8 we'll adjust it later.

9 THE COURT: All right.

10 MR. ROSE: And then I was going to hand the
11 witness the original for the admission into the
12 court file as we go.

13 THE COURT: All right.

14 MR. ROSE: I have a book for Mr. Eliot
15 Bernstein.

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. Would you state your name for the record?

19 A. Robert Spallina.

20 Q. Did you know Simon and Shirley Bernstein,
21 Mr. Spallina?

22 A. Yes, I did.

23 Q. And when did you first meet Simon and Shirley
24 Bernstein?

25 A. In 2007.

1 Q. What was your occupation at the time?

2 A. I was working as an estate planning attorney.

3 Q. With a law firm?

4 A. Yes.

5 Q. And what was the name of the law firm?

6 A. Tescher, Gutter, Chaves, Rubin, Ruffin and
7 Forman and Fleisher.

8 Q. And did Simon and Shirley Bernstein retain
9 your law firm?

10 A. Yes, they did.

11 Q. I'm going to approach with Exhibit No. 9 --
12 Plaintiff's Exhibit 9. Ask if you'd identify that
13 document?

14 A. This was an intake sheet to open up the file,
15 dated November 16th of 2007.

16 Q. And the clients are Simon and Shirley
17 Bernstein?

18 A. The clients were Simon and Shirley Bernstein,
19 yes.

20 MR. ROSE: I would move Exhibit 9 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No verbal response]

24 THE COURT: No objection being stated, I'll
25 receive that as Plaintiff's 19.

1 (Plaintiff's Exhibit No. 9 was received into
2 evidence.)

3 BY MR. ROSE:

4 Q. Now, what was the purpose of Simon and Shirley
5 Bernstein retaining your law firm?

6 A. They wanted to review and go over their
7 existing estate planning and make changes to their
8 documents.

9 Q. I'm going to hand you Exhibit No. 10, and ask
10 you if you can identify for the record Exhibit 10.

11 A. These are meeting notes, my meeting notes,
12 and -- and then partner Don Tescher's meeting notes from
13 several different meetings that we had with Si and
14 Shirley during the time following them retaining us as
15 clients.

16 Q. And is it your standard practice to take notes
17 when you're meeting with clients?

18 A. Yes.

19 Q. And were these notes kept in your company's
20 files and were they produced with Bates stamp numbers?

21 A. Yes, they were.

22 MR. ROSE: I would move Exhibit 10 into
23 evidence, Your Honor.

24 THE COURT: Is there any objection to the
25 exhibit?

1 [No verbal response].

2 THE COURT: No objection being stated, they'll
3 be received as Plaintiff's 10.

4 (Plaintiff's Exhibit No. 10 was received into
5 evidence.)

6 BY MR. ROSE:

7 Q. Now, for today's purposes, are those notes in
8 chronological or reverse chronological order?

9 A. This is reverse chronological order.

10 Q. Okay. Can you go to the bottom of the stack
11 and start with the earliest notes. Do they reflect a
12 date?

13 A. Yes. 11/14/07.

14 Q. And if you'd turn to the last page, is that
15 your partner's notes that are in evidence?

16 A. Yes. We both would always take notes at the
17 meetings.

18 Q. And so the first -- was that the first meeting
19 with Mr. Simon or Shirley Bernstein?

20 A. I believe so, yes.

21 Q. Now, before you met with Simon and Shirley
22 Bernstein, did you have any prior relationship with
23 them?

24 A. No, we did not.

25 Q. Did you personally know either of them before

1 that date?

2 A. No, I did not.

3 Q. 11/14/2007. Okay. And if you'd just flip
4 back to the client intake. I think that was dated
5 November the 26th?

6 A. It was two days later, 11/16. The file was
7 opened two days later.

8 Q. So file open.

9 Now, did you know in advance of the meeting
10 what they were coming in to talk about?

11 A. Yeah. They were coming in to talk about their
12 estate planning.

13 Q. And did they provide you in advance of the
14 meeting with any of their prior estate planning
15 documents?

16 A. I believe we had copies of documents. I don't
17 know if they provided them at that meeting or if they
18 provided them before for us to look at, or after, but I
19 know that there were existing documents that were in our
20 file.

21 Q. Okay. Let me approach and hand you
22 Exhibit 40A, which is -- bears Tescher Spallina
23 Number 1.

24 Does that appear to be an envelope from
25 Stephen Greenwald --

1 A. Yes.

2 Q. -- directed to Simon Bernstein?

3 A. Yes, it is.

4 Q. And copy of this was in your files when they
5 were produced?

6 A. Yes.

7 Q. And was Stephen Greenwald the prior lawyer
8 that represented Simon and Shirley Bernstein, as far as
9 you know?

10 A. Yes. Yes, he was.

11 Q. I'm going to hand you Exhibit 40B, which is a
12 letter from Mr. Greenwald to Simon and Shirley
13 Bernstein.

14 Is that also -- is that also provided in your
15 files?

16 A. Yes, sir.

17 Q. Does it bear a Bates stamp of your law firm?

18 A. Yes, it does.

19 Q. Okay. And does Mr. Greenwald, in that letter,
20 disclose what he is sending to Simon --
21 Mr. and Mrs. Simon L. Bernstein?

22 A. Yes, he did. Their estate planning documents,
23 including their ancillary documents, their wills, their
24 trusts, health care powers, durable powers and living
25 wills.

1 Q. And if -- I'll show you 40C, D, E and F, and
2 ask if you can identify these as some of the documents
3 that were included with the letter from Mr. Greenwald?

4 A. We have each of the first codicils to
5 Mr. and Mrs. Bernstein's wills, and we have each of
6 their wills.

7 MR. ROSE: I would move Exhibit 40A through F
8 into evidence, Your Honor.

9 THE COURT: Any objection?

10 [No response.]

11 THE COURT: No objection being stated, I'm
12 going to receive this as Plaintiff's 40A through F.

13 (Plaintiff's Exhibit Nos. 40A-F were received
14 into evidence.)

15 BY MR. ROSE:

16 Q. Within Exhibit 40, is there a will and a --
17 for Simon and a will for Shirley?

18 A. Yes, there is.

19 Q. And could you tell the Court the date of those
20 documents?

21 A. August 15, 2000.

22 THE COURT: Are both documents the same date?

23 THE WITNESS: Yes, they are, Your Honor.

24 THE COURT: All right. Thanks. I just wanted
25 to make sure I don't get confused.

1 BY MR. ROSE:

2 Q. Can you generally describe what the estate
3 plan reflected in Exhibit 40 would be, who are the
4 beneficiaries and what percentages?

5 A. Okay. Just give me a minute. I haven't seen
6 these in...

7 The plan under the documents -- and let me
8 just make sure it's the same under both documents. The
9 plan under the documents was to provide all the assets
10 to the survivor of Shirley and Si, and that at the death
11 of the survivor of the two of them, assets would pass
12 to -- it appears to be Ted, Pam, Eliot, Jill and Sue and
13 Lisa -- and Lisa. So it looks to be a typical estate
14 plan; everything would pass to the survivor at the first
15 death, and then at the second death everything to the
16 children.

17 Q. How many of the children under the 2000
18 documents?

19 A. This shows all five. The will shows all five.

20 Q. What page are you looking at?

21 A. The first page of the will. Is this -- oh,
22 no. That's just as to tangible personal property. I'm
23 sorry.

24 Q. That's okay. Are you on -- are you in Simon's
25 or Shirley's?

1 A. I'm in -- on both documents, to make sure the
2 disposition was the same.

3 Q. Okay. So on the page -- the first page, it
4 talks under --

5 A. It speaks to tangible personal property.

6 Q. Split equally among the five children?

7 A. Among the five children.

8 Q. Let me just stop you one second right there.
9 If you would, turn --

10 MR. ROSE: This might help, Your Honor, if
11 you'd turn to Tab 7. It may be out of order.
12 Might be a good time just to go over the family
13 tree and let -- get everyone on the same page of...

14 We prepared a chart, and I'm going to put
15 the -- it lists Simon and Shirley and the names of
16 their children on the second line, and then under
17 each child with arrows, the names of the
18 grandchildren and which parents they belong to.

19 THE WITNESS: This looks accurate.

20 MR. ROSE: I would move Exhibit 7 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No response.]

24 THE COURT: No objection being stated, that's
25 in evidence as Plaintiff's 7.

1 (Plaintiff's Exhibit No. 7 was received into
2 evidence.)

3 BY MR. ROSE:

4 Q. So under the 2000 documents, for personal
5 property, it's split among the five children.

6 And when you get to the residuary estate or
7 the amount that was put into trusts, who are the
8 beneficiaries?

9 A. Again, at the death of the survivor of the two
10 of them, tangible personal property would go to the five
11 children, and the residuary of the estate would go to
12 four of the five children. It appears that Pam is cut
13 out of these documents. And I recall that now, yes.

14 Q. Okay. So under the 2000 documents, Eliot
15 Bernstein would get 25 percent of the residuary?

16 A. Correct.

17 Q. Now, if you look at page 5, it talks
18 about -- page 5, near the top, it says "upon the death
19 of my husband," then "the principal of his trust shall
20 pass," and then the next sentence says "to the extent
21 that said power of appointment -- oh, "and such shares
22 equal or unequal and subject to such lawful trust terms
23 and conditions as my husband shall by will appoint."

24 Do you see what I'm talking about?

25 A. Yes, I do.

1 Q. That's a power of appointment?

2 A. Correct.

3 Q. And then it says, the next sentence, To the
4 extent the power of appointment is not effectively
5 exercised, then it goes to the four of the five
6 children?

7 A. Correct.

8 Q. So under the 2000 documents, the survivor
9 would have the power to give it all to one?

10 A. Correct.

11 Q. And theoretically change it and give some to
12 Pam?

13 A. That's true, by the language of this document.

14 Q. Okay. So I'm just going to write. We have a
15 power of appointment, which we don't need to belabor, in
16 favor of the survivor; and then if it's not exercised,
17 Eliot gets 25 percent, and three other siblings get the
18 balance?

19 A. 25 percent each.

20 Q. Okay.

21 A. Equal shares.

22 Q. Now, when Simon and Shirley came to you, did
23 they give you an indication whether they wanted to keep
24 in place the 2000 structure?

25 A. No. They wanted to change the dispositions

1 under their documents.

2 Q. Okay. So if we work through your notes now,
3 which are in evidence as Exhibit No. 10, the first
4 meeting was November the 14th, 2007. You had a
5 discussion about Simon's net worth -- Simon and
6 Shirley's net worth, how much money they had at that
7 time?

8 A. Yes.

9 Q. Okay. I'm going to show you Exhibit No. 12
10 before we --

11 Do you recognize the handwriting on
12 Exhibit 12?

13 A. No.

14 Q. Okay. I believe it's Simon Bernstein's
15 statement of his net worth.

16 But you have seen this document before?

17 A. I don't recall.

18 Q. Okay. And you're not familiar with his
19 handwriting to --

20 A. No. Other than his signature.

21 Q. That's fine.

22 But during the discussion, did you discuss
23 Simon's net worth?

24 A. Yes. Both my partner and I.

25 Q. And if I look at Mr. Tescher's notes, which

1 are a little easier to read, he lists the joint
2 brokerage account, some money for Simon, Simon, a
3 house -- the house appears to have a million dollar
4 mortgage -- a condo, some miscellaneous and some life
5 insurance. And he totals -- that totals to 13 million,
6 and then he lists 5 million for 33 shares of the
7 company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if I add up what Mr. Tescher wrote
11 in his notes, I get to about \$18 million.

12 And this is on November the 14th of '07,
13 around 18 million, but that includes life insurance?

14 A. Yes, it does.

15 Q. Okay. Now, did you meet with them -- how long
16 were these meetings with Simon and Shirley Bernstein?

17 A. They could be an hour; sometimes more.

18 Q. Now, if we flip through your notes, does it
19 reflect a second meeting?

20 A. Yes, it does.

21 Q. And what's the date of the second meeting?

22 A. 12/19/07.

23 Q. And do you have any -- I'm sorry. 12/19?

24 A. 12/19/07.

25 Q. Okay. And what's the -- let's just put all

1 the dates up here. That was the second meeting.

2 Are there notes from a third meeting?

3 A. The next meeting was January 31, '08.

4 Q. Okay. Is there a fourth meeting?

5 A. March 12 of '08.

6 Q. Now, just to put this in perspective, the
7 document that we are going to -- well, the document
8 that's been admitted into probate in this case is a will
9 of Shirley Bernstein that bears a date of May 20, 2008.

10 Does that sound consistent with your memory?

11 A. Yeah, it was clearly 2008.

12 MRS. CANDICE BERNSTEIN: Excuse me. Can you
13 turn that so we can see it?

14 THE WITNESS: Sure. Sorry.

15 THE COURT: Ma'am, you are not a party. You
16 are not an attorney. And you are not really
17 supposed to be sitting there. I'm letting you sit
18 there as a courtesy. If you ask for and inject
19 yourself any further in the proceeding than that,
20 I'll have to ask you to be seated in the gallery.
21 Do you understand?

22 MRS. CANDICE BERNSTEIN: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSE:

25 Q. So you have four meetings with Simon and

1 Shirley Bernstein.

2 And did it take that long to go over what they
3 wished to do with their estate planning documents?

4 A. It was more of us, you know, trying to get a
5 handle on everything that they had, the business, prior
6 planning. From the first meeting to the March meeting,
7 it was only a couple of months. The holidays were in
8 there. So it wasn't uncommon for us to meet with a
9 client more than once or twice when they had a
10 sophisticated plan and asset schedule.

11 Q. At this time --

12 A. By the last meeting, we knew what we needed to
13 do.

14 Q. And around this -- based on your notes, did
15 Simon Bernstein believe he had a net worth all in of
16 about 18 million when he met with you?

17 A. Yeah, it appears that way, 18, 19 million
18 dollars.

19 Q. And did he discuss at all with you that he was
20 involved in a business at that time, an insurance
21 business?

22 A. Yes.

23 Q. And did he give you an indication of how well
24 the business was doing at around the times of these
25 meetings between November 2007 and March or May of 2008?

1 A. Yeah, the business was doing well at that
2 time. He was -- he was very optimistic about the future
3 of the business.

4 Q. Now, did you do any -- did you prepare any
5 documents before the will was signed in May? Did you
6 prepare drafts of the documents?

7 A. Yes, we did. We always prepare drafts of
8 documents.

9 Q. And did you share the drafts with Simon and
10 Shirley?

11 A. Yes, we did.

12 Q. Okay. I'm going to hand you Exhibit 11, and
13 ask if you can identify that for the record?

14 A. This is a letter from our firm dated April 19
15 of 2008. It's transmitting the documents to the client,
16 with an explanation that they could follow, better than
17 reading their documents -- a summary of the documents.

18 Q. Is that a true and authentic copy of a
19 document that you created?

20 A. Yes, it appears to be.

21 MR. ROSE: I would move Exhibit 11 into
22 evidence, Your Honor.

23 THE COURT: All right. Any objection?

24 [No response.]

25 THE COURT: All right. Then that's in

1 evidence as Plaintiff's 11.

2 (Plaintiff's Exhibit No. 11 was received into
3 evidence.)

4 BY MR. ROSE:

5 Q. And if I read Exhibit 11, the first three
6 words say, "Enclosed are drafts of each of your wills
7 and revocable trusts, the children's family trust, each
8 of your durable powers of attorney, designations of
9 health care surrogate and living wills," correct?

10 A. Yes.

11 Q. So about a month and 11 days before anything
12 was signed, documents were sent by Federal Express to
13 Simon and Shirley Bernstein?

14 A. Correct.

15 Q. And it appears to have gone to Simon's
16 business?

17 A. Yes.

18 Q. Now, if you look at -- does your -- does your
19 letter, sort of in laymen's terms, rather than reading
20 through the legalese of a will, explain what the estate
21 planning was under the documents that have yet to be
22 signed but that you were preparing?

23 A. Yes, it does, as much as possible in laymen's
24 terms.

25 Q. Can you just give us a short -- well, the will

1 itself for both Simon and Shirley was a relatively
2 simple will that poured over into a revocable trust, one
3 for each?

4 A. Yes, poured over wills for both.

5 Q. And whoever died first would inherent the
6 personal property?

7 A. All tangible personal property under the will
8 would pass to the survivor.

9 Q. So assuming Simon survived Shirley, he would
10 be the sole beneficiary of her estate?

11 A. Correct.

12 Q. And then any of her residuary would go into a
13 trust?

14 A. That's correct.

15 Q. And he, in fact, outlived Shirley?

16 A. He did.

17 Q. Okay. Now, if you go to the second page, at
18 the top, you describe the will of Shirley Bernstein.

19 It's essentially identical to Si -- it says "Si."

20 Just for the record, that's Simon shorthand?

21 A. Yes.

22 Q. Si is the personal representative of Shirley's
23 estate, and Ted is designated as successor if Simon is
24 unable to serve.

25 That was what was in the document you sent in

1 April?

2 A. Yes. I believe so, yes.

3 Q. And that provision remained in the final
4 documents you signed?

5 A. Yes.

6 Q. Now, did Ted eventually become a successor
7 personal representative upon Simon's death?

8 A. Yes, he did.

9 Q. Then you next start to talk about the Simon L.
10 Bernstein trust agreement.

11 And theoretically, that was going to be the
12 primary testamentary document?

13 A. Correct, it was.

14 Q. And that's fairly standard?

15 A. Yes. When a client wants to avoid probate, we
16 use a revocable trust to title assets in prior to death.
17 Those assets remain confidential; they're not part of
18 the court record. And the trust is also used to avoid
19 the need for the appointment of a guardian in the event
20 of incapacity, because there's a successor trustee
21 mechanism.

22 Q. Okay. Now, under Simon's trust agreement,
23 moving down to the third paragraph, under that heading,
24 it says that both trusts provide for mandatory income
25 distributions. And then the next sentence starts, "Upon

1 Shirley's death, she has been given a special power to
2 appoint the remaining assets of both the marital trust
3 and the family trust to any of your lineal descendants
4 and their spouses, a power to redirect and reallocate."

5 Do you see that?

6 A. Yes.

7 Q. Now, is that consistent with the way the
8 documents were intended to be drafted?

9 A. Yes, it is.

10 Q. And I guess it's sort of similar to what
11 existed in the 2000 wills?

12 A. Yes. Typically, you give the survivor of the
13 spouse a power to appoint in the event that they want to
14 change any of the estate planning of the first to die.
15 Found in most first marriage documents with only
16 children from that marriage.

17 Q. And this is a first marriage with all five
18 children being the product of the same marriage --

19 A. Yes.

20 Q. -- as far as you know?

21 A. As far as I know.

22 Q. And as far as you know, Simon and Shirley
23 Bernstein, they each married only once in their
24 lifetime, to each other?

25 A. That's all I know.

1 Q. If you flip to the next page, there's a
2 shorter paragraph for Shirley.

3 It basically says -- it's virtually identical,
4 except that Simon is the initial successor, and after
5 that, Ted would be Simon's replacement if he passed
6 away?

7 A. Correct.

8 Q. And is that the mechanism by which Ted
9 Bernstein became the successor trustee in this lawsuit?

10 A. Yes, it is.

11 Q. Now, if Shirley died first, then did the
12 documents give Simon the same power of appointment over
13 the assets in her trust that was provided for in the
14 Simon document if he died?

15 A. Same power of appointment was in both
16 documents. They were identical documents, with one
17 exception.

18 Q. And what was the exception; the name of the
19 successor trustee?

20 A. The name of the successor trustee.

21 Q. And then Simon wanted his then business
22 partner, Bill Stansbury, to be his successor trustee in
23 both his will and his trust, and Shirley wanted her
24 oldest son, Ted, to be her successor in both documents?

25 A. Correct. The signer, non-survivor.

1 Q. Okay. And Shirley, I guess it says here, also
2 made a specific gift of \$200,000 to someone named
3 Matthew Logan?

4 A. Correct.

5 Q. If you look at our family tree chart, I think
6 Matthew Logan is under Ted.

7 He is the son of Ted's second wife, Deborah?

8 A. Correct.

9 Q. Okay. So there was a \$200,000 special gift to
10 Matthew that was in the documents that you sent on
11 April 9th?

12 A. Correct.

13 Q. Then you prepared family trusts for the
14 children.

15 Were those trusts created at the time?

16 A. Yes, they were.

17 Q. Now, after you sent your letter on April 9th,
18 did you have a further discussion with Simon and Shirley
19 before the documents were signed?

20 A. I can't recall, but we probably -- we probably
21 did, to set up a meeting and talk -- you know, either,
22 A, talk about the documents, the draft documents, any
23 changes that they wanted to make on the draft documents.
24 It would be typical of us to do that, although I don't
25 have any meeting notes that showed that, so...

1 Q. Now, under -- we'll talk -- let's talk about
2 the ones that matter.

3 Because Shirley died first, her 2008 trust
4 became the beneficiary of her estate?

5 A. Correct.

6 Q. And then Simon had a power of appointment,
7 correct?

8 A. Um-hum.

9 Q. And if -- you have to say yes or no.

10 A. Yes.

11 Q. And if he didn't exercise the power of
12 appointment, was there a default set of beneficiaries
13 that were designated in the documents you drafted in
14 2008?

15 A. Yes.

16 Q. And what was the default set of beneficiaries?

17 A. Simon had and Shirley had in their documents
18 excluded Pam and Ted at the death of the survivor of the
19 two of them.

20 Q. Okay. So if the power of appointment was not
21 properly exercised, it would just go to three, and Eliot
22 would end up with 33 and a third percent and two of the
23 other sisters would get the balance?

24 A. That's correct.

25 Q. Did Simon and Shirley eventually execute

1 documents in 2008?

2 A. Yes, they did.

3 Q. I'm going to hand you Exhibit No. 1, which
4 is --

5 A. A copy of Si's will from --

6 Q. Do you have Exhibit 1?

7 A. Excuse me. Sorry. Shirley's will.

8 Q. Is that a conformed copy of the document?

9 A. Yes, it is.

10 MR. ROSE: I would move Exhibit 1 into
11 evidence.

12 THE COURT: Any objection?

13 [No response.]

14 THE COURT: That's in evidence as
15 Plaintiff's 1.

16 (Plaintiff's Exhibit No. 1 was received into
17 evidence.)

18 BY MR. ROSE:

19 Q. Now, that says "conformed copy." If I turn to
20 the last page, there's no handwritten signatures.

21 A. Correct.

22 Q. Do you know where the original of that
23 document sits today?

24 A. It was filed with the court.

25 Q. Okay. So somewhere in the courthouse, the

1 original goes.

2 And that's something that the client would
3 keep?

4 A. Correct. This is what we would send to the
5 client to include with their files.

6 Q. When you filed the original with the court,
7 did anyone object while Simon was alive?

8 A. No.

9 Q. Okay. I'm going to hand you Exhibit No. 2.
10 Do you recognize that document?

11 A. Yes. This is Shirley's trust agreement that
12 she executed in 2008.

13 Q. Now, does that document have copies of her
14 signature?

15 A. Yes. These are actual copies of the signing
16 parties and their signatures.

17 Q. And how many originals would have been created
18 of this document?

19 A. We always created three originals of the trust
20 agreements.

21 Q. Okay. Now, if you turn to the next -- if you
22 turn to the last page, it says that Shirley put a dollar
23 into her trust when it was created.

24 A. Yes.

25 Q. And that's to make it a valid trust?

1 A. Yeah, I mean, it's not required today, but
2 it's pretty much just form to show a dollar. She had
3 certainly funded it more than that.

4 Q. And eventually Shirley put some assets into
5 the trust?

6 A. Yes.

7 Q. Okay. And if you go to the page before that,
8 page 27, it appears to be a signature page, correct?

9 A. Yes.

10 Q. Now, were you one of the witnesses to the
11 signature of Shirley Bernstein on Exhibit 2?

12 A. Yes, I was.

13 Q. And were you present with Shirley Bernstein
14 and the other witness, Traci Kratish, at the time of the
15 execution of the documents?

16 A. Yes, I was.

17 Q. And they're notarized by someone named
18 Kimberly Moran.

19 Does she work for your office?

20 A. Yes, she did.

21 Q. And through her involvement with your firm
22 and -- did she personally know Shirley and Traci
23 Kratish, as well as yourself?

24 A. Yes, she did.

25 Q. Now, at the same time that Shirley signed her

1 documents, did Simon sign a similar set of 2008 will and
2 trust, similar to the drafts that were sent in April?

3 A. Yes, he did. We were all sitting in the main
4 conference area in their offices together.

5 Q. In Simon's office or your office?

6 A. In Simon's offices.

7 Q. Okay. So why would someone from your office
8 come to Simon's office rather than rely on the notary
9 that they have there?

10 A. Because we wanted to accommodate Shirley and
11 Si in their offices and not have them travel.

12 Q. You personally went there. Did you personally
13 go through to make sure that the documents were signed
14 with all the formalities required under Florida law to
15 make them valid and enforceable?

16 A. Yes, we did. That's why we were there.

17 Q. And if Simon did not have a 2008 will
18 and -- sorry.

19 If Simon did not have a 2002 will and trust,
20 would it be your belief that the 2008 will and trust
21 would be valid?

22 A. Yes.

23 Q. Were they properly signed with all the same
24 testamentary formalities required by Florida law?

25 A. Yes, they were.

1 Q. Okay. Did Shirley at some point amend her
2 trust agreement?

3 A. Yes, she did.

4 Q. And do you recall why she amended it?

5 A. She amended it to remove Matt Logan from the
6 document that she had included previously as a specific
7 device.

8 Q. Do you know why Matt was removed?

9 A. It's attorney-client privilege.

10 Does it matter?

11 Q. I'll withdraw the question.

12 Was Matthew removed at the direction of
13 Shirley?

14 A. Yes.

15 Q. I'll withdraw --

16 A. Yes. Yes. Yes.

17 Q. Did Shirley sign a document that effectively
18 removed Matthew?

19 A. Yes, she did.

20 Q. Let me hand you Exhibit No. 3, and ask you if
21 you recognize that document?

22 A. Yes, I do.

23 Q. Now, was this document signed with the same
24 testamentary formalities as the 2008 trust?

25 A. Yes, it was.

1 MR. ROSE: We would move Exhibit 3 into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 [No response.]

5 THE COURT: All right. That's in evidence as
6 Plaintiff's 3.

7 (Plaintiff's Exhibit No. 3 was received into
8 evidence.)

9 BY MR. ROSE:

10 Q. Now, if you look -- there's a paragraph 1 and
11 a paragraph 3, but no paragraph 2.

12 Do you know why that is?

13 A. It's just a mistake in drafting.

14 Q. And did you specifically discuss with Shirley,
15 whose privilege I technically would control -- my client
16 would control --

17 Did you specifically discuss with Shirley the
18 fact that the effect of the first amendment would be to
19 remove the specific gift that she had made for Matthew
20 Logan?

21 A. Yes. Even prior to the signing of the
22 document.

23 Q. And is this the last relevant testamentary
24 document that Shirley ever signed that you're aware of?

25 A. Yes, it is.

1 Q. Did you meet with Simon and Shirley in person
2 to talk about this amendment?

3 A. Si had called me and said that Shirley had a
4 change to her documents, and asked me to give her a call
5 and have lunch with her. I called her. We arranged for
6 a meeting in her house to execute the document.

7 Q. Now, you brought your -- you brought Kimberly
8 with you to get -- for convenience and to make sure the
9 documents were properly executed?

10 A. Correct. She had -- she had her personal
11 assistant that was there, Rachel Walker, to serve as
12 another witness.

13 Q. Just so I don't have to go back, what's the
14 date of the amendment?

15 A. November 18th, 2008.

16 Q. So now we five documents that exist; 2008,
17 will, trust, will, trust, and an amendment to Shirley's
18 trust.

19 Did you share any of those documents with any
20 of Simon and Shirley's children at that time?

21 A. No, we did not.

22 Q. Did any of the -- did any of the children play
23 any role in bringing Simon or Shirley to your offices?

24 A. Not that I'm aware, no.

25 Q. Did any of the children accompany them

1 to -- any time they came to visit you, did any of the
2 children come with them, drag them along?

3 A. No.

4 Q. So you prepared -- did you do some other
5 estate planning in addition to the 2008 testamentary
6 documents?

7 A. Yes, we did.

8 Q. Can you briefly describe some of the things
9 you did?

10 A. We had set up a Florida limited partnership.
11 We created a general partner entity for that
12 partnership, a limited liability company.

13 Q. What's the name of the Florida limited
14 partnership?

15 A. Bernstein Family Investments, LLLP.

16 Q. Was that an entity that was in existence or
17 was it created under your direction?

18 THE COURT: Can I stop you a second? Is this
19 going to help me figure out the validity of the
20 testamentary documents?

21 MR. ROSE: Only in the very narrowest sense.
22 I'm just trying to establish that they had a very
23 lengthy and extensive relationship, and they did a
24 lot of estate planning for Simon and Shirley. But
25 I'll be very brief.

1 THE COURT: Well, if that becomes relevant
2 later, perhaps you could come back to it. But I
3 don't see the relevance at this point, so I'll ask
4 you to move on.

5 MR. ROSE: Yes, sir.

6 BY MR. ROSE:

7 Q. Now, was Simon concerned at all about asset
8 protection as part of some of the things you discussed?

9 A. Yes, he was.

10 Q. Now, we have -- did you have any discussion
11 with him about who was expected to live longer or if
12 either of them had health problems that you had any
13 knowledge of?

14 A. Si was not -- he was in good health, but he
15 had had some heart issues. And Shirley had had other
16 issues as well. And I think it -- early on, he didn't
17 know, but as the relationship went on, we kind of knew
18 that Shirley was sicker than him and would probably pass
19 first.

20 Q. So Shirley died -- it's in the public
21 record -- but December --

22 A. 2010, yeah.

23 Q. -- 8th. So Simon was her -- he survived her;
24 he becomes the sole beneficiary as far as tangible
25 personal property under her will?

1 A. Yes, he does.

2 Q. The residuary goes into the Shirley Bernstein
3 Trust?

4 A. That's correct.

5 Q. He's the sole successor trustee and the sole
6 beneficiary --

7 A. Yes, he is.

8 Q. -- during the term of his life?

9 A. Correct.

10 Q. Now, was there a great deal of effort put into
11 inventorying the assets, things like that?

12 A. No, there wasn't. For purposes of opening up
13 Shirley's probate, we had asked Si to estimate the value
14 of, you know, her tangible personal property. And
15 that's what we included on the inventory that was filed
16 in the probate.

17 Q. Now, if I'm correct, 2010 was the year there
18 were no estate taxes at all?

19 A. No estate taxes.

20 Q. Simon's the sole beneficiary?

21 A. Sole beneficiary. Even if there were taxes,
22 there wouldn't have been any tax on the first death,
23 because everything went to Si, and there was a marital
24 deduction.

25 Q. While Simon was alive, did Ted have any access

1 to the documents, as far as you know? Did you ever send
2 the testamentary documents of Simon or Shirley to Ted?

3 A. No, we did not.

4 Q. Did Ted play any role in the administration of
5 the estate while Simon was alive?

6 A. No, he did not.

7 Q. Did any of the other children play any role in
8 the administration of the estate while Simon was alive?

9 A. No, they did not.

10 Q. Now, did you have to -- well, strike that.

11 Because it was only Simon, was it sort of the
12 decision by Simon, That I don't want to spend a lot of
13 time and money in this estate because it's just wasting
14 my own money?

15 A. Yes.

16 Q. And that's not unusual in a situation where
17 you have a surviving spouse that's the sole beneficiary?

18 A. Correct.

19 Q. Now, did there come a point in time when Pam,
20 who was not a named beneficiary of the -- Shirley's
21 documents, learned of the fact that she had been
22 excluded?

23 A. Yes, there was.

24 Q. Okay. And did you get involved with
25 discussions with Pam or her lawyer?

1 A. She had hired an attorney, who had made a
2 request to get a copy of her mother's documents. And I
3 called Si, spoke to Si about it, and he authorized me
4 giving Pam those documents -- or her attorney those
5 documents.

6 Q. Were they provided to any of the other
7 children; that would be Ted or his brother, Eliot, or
8 his two sisters, Lisa or Jill?

9 A. No, they were not.

10 Q. And did Simon Bernstein at some point decide
11 to change his testamentary documents?

12 A. Yes, he did.

13 Q. Do you recall approximately when that
14 happened?

15 A. Early 2012, he called and requested that we
16 meet to go over his documents.

17 Q. I'm going to hand you an exhibit marked
18 Exhibit 13, and ask you if you recognize those as your
19 own notes?

20 A. Yes. These are my notes from that meeting in
21 2012.

22 MR. ROSE: I would move Exhibit 13 into
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 [No response.]

1 THE COURT: All right. That's in evidence as
2 Plaintiff's 13 then.

3 (Plaintiff's Exhibit No. 13 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Now, during this meeting, did Simon discuss
7 the possibility of altering his estate plan?

8 A. Yes, he did.

9 Q. Did you also go over his current finances?

10 A. Yes, we did.

11 Q. Now, we've seen from 2007 that he had
12 disclosed about \$18 million.

13 As part of the meeting in February of 2012, he
14 gave you sort of a summary of where he stood at that
15 time?

16 A. Yes, he did.

17 Q. And what was the status of the Shirley
18 Bernstein probate administration in early 2012, about
19 13 months after she passed away?

20 A. It was still not closed.

21 Q. Do you know why it was not closed?

22 A. I think that we were still waiting -- I'm not
23 sure that -- we were still waiting on waivers and
24 releases from the children to close the estate, to
25 qualify beneficiaries under the estate if Si were to

1 die. We had to get waivers and releases from them.

2 Q. Standard operating procedure?

3 A. Standard operating procedure.

4 Q. Okay. So Simon here, it says -- it says at
5 the top "SIPC receivable."

6 Do you know what that is?

7 A. Yes, I do. That was -- Si had made an
8 investment in a Stanford product that was purported to
9 be a CD; it was an offshore CD. And when the Stanford
10 debacle hit, I guess he filed a claim with SIPC to get
11 those monies back, because it was supposedly a cash
12 investment.

13 Q. And so he invested in a Ponzi scheme and lost
14 a bunch of money?

15 A. Correct.

16 Q. Some of the 18 million he had in 2007 he lost
17 in the next four and a half years in investing in a
18 Ponzi scheme?

19 A. That's correct.

20 Q. And then the maximum that the SIPC -- which is
21 like the FDIC for investments.

22 You're familiar with that, correct?

23 A. Yes.

24 Q. The maximum is 500,000.

25 You don't actually necessarily recover

1 500,000? You have a receivable, right?

2 A. Yes.

3 Q. Do you know how much he actually realized from
4 the SIPC?

5 A. I believe he never received anything.

6 Q. Okay. And then it said, LIC receivable,
7 \$100,000.

8 Am I reading that correct?

9 A. Yes.

10 Q. And LIC was the company he was involved, with
11 others?

12 A. Yes.

13 Q. Okay. So I put here 600 that he put, but the
14 600 is really probably closer to 100 if you didn't get
15 the SIPC money?

16 A. Correct.

17 Q. So I'm going to just put a little star here
18 and put it's really 100,000, and sort that out.

19 So then he says -- he has -- Si's estate, this
20 would be his personal assets. He's got an interest in
21 the LLLP.

22 That is not relevant to discuss how it was
23 formed, but there was an LLLP that was owned, some by
24 Si's trust, some by Shirley's trust?

25 A. Correct.

1 Q. And at the time, he thought the value was
2 1,150,000 for his share?

3 A. That's correct.

4 MR. BERNSTEIN: Can I object, Your Honor?

5 THE COURT: What's the objection?

6 MR. BERNSTEIN: Relevance.

7 THE COURT: Overruled.

8 MR. BERNSTEIN: Okay.

9 BY MR. ROSE:

10 Q. And then he had an IRA that says 750,000.

11 A. Correct.

12 Q. And those two things totaled 1,550,000?

13 A. No. They totaled one million nine. Right?

14 Q. Okay. You're right.

15 You wrote next to it "estate tax."

16 What does that mean, on the side next to it?

17 A. I think what I had done was offset the value
18 of the assets in his estate by the loans that were
19 outstanding at the time.

20 Q. And it shows a million seven in loans?

21 A. A million seven in loans.

22 Q. So we had loans back in 2008 -- I'm sorry.
23 November of 2007 time period -- or 2008, which were
24 only -- so we have loans now, you said, a million seven?

25 A. Well, he had a \$1.2 million loan with

1 JP Morgan that was collateralized with the assets of the
2 LLLP.

3 Q. And then you list -- just to speed up, then
4 you have -- underneath that, it says Shirley's asset was
5 empty, right? Because whatever was in had gone to
6 Simon?

7 A. Yeah, her estate had nothing in it.

8 Q. She had a Bentley, I think, when she died.
9 Do you know what happened to the Bentley?

10 A. I wasn't aware that she had a Bentley.

11 Q. Did you come to learn that she had a Bentley
12 and Simon gave it to his girlfriend, and she traded it
13 in at the dealership and got a Range Rover?

14 A. Much, much, much later on --

15 Q. But you know --

16 A. -- after Si's death.

17 Q. But you know that to be the case?

18 A. I wasn't aware that it was traded for the
19 Range Rover. I thought he bought her the Range Rover.
20 I didn't realize he used a Bentley to do it.

21 Q. Okay. Somehow you know the Bentley became
22 something for Maritza?

23 A. Yes.

24 Q. That's the name of his girlfriend?

25 A. Yes.

1 Q. Okay. Then it says, in Shirley's trust,
2 condo, one million -- I'm sorry. I should go to the
3 next column. It says "FMV."

4 That would be shorthand for Fair Market Value?

5 A. Yes.

6 Q. So condo, 2 million, which is here; house,
7 3 million; half of the LLLP, which is Shirley's half
8 after -- I assume, after the deduction of the loan, was
9 800,000?

10 A. Um-hum.

11 Q. Then it says "LIC." That's the company Life
12 Insurance Concepts that Mr. -- that Simon, his son Ted,
13 and a gentleman named Bill Stansbury had formally been
14 involved, another attorney, shares by then. Because
15 we're in February of 2012.

16 But, in any event, that's Simon's company?

17 A. Correct.

18 Q. And he told you in 2007 it was worth --
19 Mr. Tescher's -- notes, like -- his interest was worth
20 5 million.

21 What did he tell you it was worth in 2012?

22 A. Zero.

23 Q. Then underneath that -- I put zero here, so
24 zero today.

25 So his net worth -- and then there was a home

1 that he owned for -- that Eliot lives in, right? He
2 didn't really own it, but he controlled it, Simon?

3 A. Yes.

4 Q. Okay. Did you set up the entity that owned
5 the home?

6 A. Yes, I did.

7 Q. Just to save time, there's an entity called
8 Bernstein Family Realty that owns the house.

9 Simon controlled that entity while he was
10 alive?

11 A. Yes, he did.

12 Q. And his estate holds a mortgage on the house
13 for 365,000?

14 A. Correct.

15 Q. So there's some interest there.

16 He didn't put it on his sheet when he talked
17 to you, but that still would have existed in some form,
18 right?

19 A. Yes.

20 Q. And it still exists to this day.

21 We don't know the value of it, but there still
22 is a mortgage, right?

23 A. Yes.

24 Q. Okay. But either way, the point of this whole
25 story is, his net worth went down significantly between

1 2007 and 2012?

2 A. Yes, it did.

3 Q. And in your world, that's not uncommon, with
4 the stock market crash, the depression, things like
5 that, that a lot of clients with high net worth would
6 have suffered losses during that time?

7 A. Many, many of them did. And even the values
8 that are on this sheet were not the real values.

9 Q. We know that the --

10 A. Clients have a tendency to overstate their net
11 worth.

12 Q. All right. And we know the Ocean Drive house
13 sold for about a million four?

14 A. Correct.

15 Q. And the Court -- there's an order that
16 approved the sale, the gross sale price of a million one
17 for St. Andrews?

18 A. Correct.

19 Q. Okay. So that's still -- that's less than
20 half, even then, Simon thought he would get.

21 Now, if you look at the bottom of the
22 Exhibit No. 13, it says a word, begins with an "I." I
23 can't really read it.

24 Can you read that?

25 A. Insurance.

1 Q. Well, did you have some discussions with Simon
2 about his insurance?

3 A. Yes, we did.

4 Q. In fact, I think -- Mr. Spallina, we talked
5 about he had -- I'm sorry.

6 Mr. Tescher's notes had a \$2 million life
7 insurance?

8 A. Correct.

9 Q. Okay. Is this the same life insurance?

10 A. Yes, it is.

11 Q. And was there a discussion about -- I guess it
12 says 1 million --

13 That's one million seven-fifty?

14 A. A million 75 -- yeah, one million seven-fifty
15 was the value of the policy.

16 Q. And the death benefit was a million six?

17 A. Million six. There was a small loan or
18 something against the policy.

19 Q. Okay. And then it says "Maritza."

20 What was Maritza down there for?

21 A. Si was considering changing -- the purpose of
22 the meeting was to meet, discuss his assets. And he
23 was, you know, having a lot of, I guess, internal -- he
24 had received another letter from his daughter -- he
25 asked me to read the letter from Pam -- that she still

1 was not happy about the fact that she had been
2 disinherited under her mother's documents if the assets
3 were to pass under the documents and he didn't exercise
4 his power of appointment. And this meeting was to kind
5 of figure out a way, with the assets that he had, to
6 take care of everybody; the grandchildren, the children,
7 and Maritza.

8 And so he thought maybe that he would change
9 the beneficiary designation on his life insurance to
10 include her. And we had talked about providing for her,
11 depending on -- an amount -- an increasing scale,
12 depending on the number of years that he was with her.

13 Q. So if you look at the bottom, it says 0 to
14 2 years, 250.

15 Is that what you're referring to?

16 A. Yes. Two to four years, 500,000. And then
17 anything over plus-four years would be -- I think that's
18 600,000.

19 Q. Now, during this discussion, was Simon
20 mentally sharp and aware of what was going on?

21 A. Oh, yeah. Yeah, he was -- he was the same
22 Simon. He was just -- you know, he was struggling with
23 his estate now. He was getting -- he felt -- I guess he
24 was getting pulled. He had a girlfriend that wanted
25 something. He had his daughter who, you know, felt like

1 she had been slighted. And he wanted to try to make
2 good by everybody.

3 Q. And at that point in time, other than the
4 house that he had bought that Eliot lived in, were you
5 aware that he was supporting Eliot with a very
6 significant amount of money each year?

7 A. I was not.

8 MR. BERNSTEIN: Object to the relevance.

9 THE COURT: Overruled.

10 BY MR. ROSE:

11 Q. Okay. So that's February.

12 A. Yes.

13 Q. What happens next in relation to Simon coming
14 in to meet with you to talk about changing his
15 documents?

16 A. He had called me on the phone and he -- we
17 talked again about, you know, him changing his
18 documents. He had been thinking about giving his estate
19 and Shirley's estate to his grandchildren. And at the
20 February meeting, I did not think it was a great idea
21 for him to include his girlfriend, Maritza, as a
22 beneficiary of the life insurance policy.

23 Q. He took your advice? He didn't change that,
24 as far as you know?

25 A. He did not.

1 Q. Okay. I'm sorry. Continue.

2 A. He did not.

3 I had suggested that he provide for her in
4 other ways; a joint account that would pass to her at
5 his death, but not to mix her in with his family in
6 their dispositive documents. And he ultimately took
7 that advice and decided that he wanted to give his
8 estate to his ten grandchildren, and that the policy --
9 which I had never seen a copy of the policy, but, you
10 know -- he had had. And I knew that he was paying for
11 it, because -- it almost lapsed, or did lapse at one
12 point, and it got reinstated -- that that policy was to
13 pass to an insurance trust that named his five children
14 as beneficiaries.

15 Q. And that's something Simon specifically
16 discussed with you when you were going over his estate
17 planning in 2012?

18 A. Correct -- or something that we had known
19 about before that meeting. But he was -- at the
20 meeting, he was starting to talk about doing a change to
21 the beneficiary designation to include Maritza, and I
22 wanted to talk him out of that.

23 Q. And at some point, he made a decision to
24 actually change his documents, correct?

25 A. He did. He did.

1 Q. And did he direct you to set up any kind of a
2 communication with his children?

3 A. Yes. He said, I want you to get -- put
4 together a conference call with me and you and my five
5 children so I can talk to them about what I want to do
6 with my estate and Shirley's estate.

7 THE COURT: All right. This would be a good
8 time for us to take a pause for a morning break.
9 We'll be in session again in 10 minutes.

10 As far as time use goes, so far Plaintiff's
11 side has used 60 minutes. So you have 90 remaining
12 in your portion of the day. And that's where we
13 stand.

14 MR. ROSE: We'll be well within our time, sir.

15 THE COURT: Great. Okay.

16 We'll be in recess for ten minutes. Is ten
17 minutes enough time for everybody? That's what
18 it'll be then.

19 (A break was taken.)

20 THE COURT: We're ready to proceed. Please
21 continue.

22 MR. ROSE: Thank you.

23 BY MR. ROSE:

24 Q. I think we were when Shirley died in December
25 of 2010, and you meet with Si, according to

1 Plaintiff's 13, on February 1st of 2012.

2 I think by May of 2012 was when this
3 conference call that you mentioned was?

4 A. Yes, it was.

5 Q. Okay. And did the five children attend the
6 conference call?

7 A. Yes, they all did.

8 Q. Were you present on the call?

9 A. Yes, I was.

10 Q. Was Simon present?

11 A. Yes, he was.

12 Q. Where was Simon physically during the call?

13 A. His office -- I believe his office.

14 Q. Were you in the same room as Simon?

15 A. No, I was not.

16 Q. You were in your office?

17 A. I was in my office.

18 Q. Okay. Generally, what was discussed during
19 this conference call?

20 A. Simon wanted to talk to his children about
21 providing for his estate and his wife's estate to go to
22 the ten grandchildren; wanted to have a discussion with
23 his children and see what they thought about that.

24 Q. And was he asking them for their approval or
25 permission or...

1 A. Well, I think he wanted to see what they all
2 thought, you know, based on things that had happened in
3 the past and documents that had been created in the
4 past. And I don't know that it was going to sway his
5 opinion, but when he told me, you know, to -- you know,
6 to have the conference call, to contact his -- he said,
7 This is what I'm going to do, so...

8 Q. During the call, did Simon ask his children if
9 anybody had an objection to him leaving his and
10 Shirley's wealth to the ten grandchildren?

11 A. Yes. He asked what everybody thought.

12 Q. Did Eliot respond?

13 A. Yes, he did.

14 Q. What did he say?

15 A. I'm paraphrasing, but he said something to the
16 effect of, Dad, you know, whatever you want to do,
17 whatever makes you happy, that's what's important.

18 Q. Did you also discuss during that call the need
19 to close Shirley's estate?

20 A. Yes, we did. We had told Si that we needed to
21 get back the waivers of accounting, the releases, and we
22 asked -- he asked them to get those back to us as soon
23 as possible.

24 Q. Okay. If I hand you Exhibit 14, it appears to
25 be an email from Eliot Bernstein to you addressing the

1 waiver that he needed to sign?

2 A. Yes, it is.

3 MR. ROSE: I move Exhibit 14 into evidence.

4 THE COURT: Any objection?

5 [No response.]

6 THE COURT: All right. That's in evidence
7 then as Plaintiff's 14.

8 (Plaintiff's Exhibit No. 14 was received into
9 evidence.)

10 MR. ROSE: As a matter of housekeeping, Your
11 Honor, I think I might have failed to move in
12 Exhibit 2, which is Shirley Bernstein's 2008 trust
13 agreement, which I would move, to the extent it's
14 not in evidence, 1, 2 and 3, which are the
15 operative documents Mr. Spallina's already
16 testified about.

17 THE COURT: Any objection?

18 MR. BERNSTEIN: What was that? I'm sorry.

19 THE COURT: Is there any objection to
20 Plaintiff's 1, which is the will of Shirley
21 Bernstein, Plaintiff's 2, which is the Shirley
22 Bernstein Trust Agreement, and Plaintiff's 3, which
23 is the First Amendment to the Shirley Bernstein
24 Trust Agreement?

25 MR. BERNSTEIN: No.

1 THE COURT: All right. Those are all in
2 evidence then as Plaintiff's 1, 2 and 3.

3 (Plaintiff's Exhibit No. 2 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Okay. This email is dated May -- May 17,
7 2012, from Eliot, correct?

8 A. Yes, it is.

9 Q. This would have been after the conference
10 call?

11 A. This, I believe, was after the conference
12 call, yep.

13 Q. And he says he's attached the waiver
14 accounting and portions of petition for discharge,
15 waiver of service for a petition for discharge, and
16 receipt of beneficiary and consent to discharge that he
17 had signed.

18 Did you receive those from Eliot?

19 A. Yes, I did. We received -- that was the first
20 waivers that we received.

21 Q. Then it says "as I mentioned in the phone
22 call."

23 Did you have any separate phone calls with
24 Eliot Bernstein, you and he, or is he referring to the
25 conference call?

1 A. I think he's referring to the conference call.

2 Q. Okay. I have not yet -- "I have not seen any
3 of the underlying estate documents or my mother's will
4 at this point, yet I signed this document after our
5 family call so that my father can be released of his
6 duties as personal representative and put whatever
7 matters that were causing him stress to rest."

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, while Simon was alive, did you ever get
11 authorization to share the testamentary documents with
12 Eliot Bernstein?

13 A. I did not.

14 Q. Now, after the call and after the discussion
15 with the siblings, did you prepare a draft of -- of new
16 documents for Simon?

17 A. Yes, I did.

18 Q. I'm going to hand you Exhibit 15; ask if
19 that's a letter that you sent to Simon Bernstein
20 enclosing some new drafts?

21 A. Yes, it is.

22 Q. Now, what's the date of that?

23 A. May 24th, 2012.

24 Q. And what's -- what is the summary -- well,
25 strike that.

1 You sent this letter to Simon Bernstein?

2 A. Yes, I did.

3 Q. By FedEx to his home?

4 A. Yes, I did.

5 MR. ROSE: I would move Exhibit 15 in
6 evidence.

7 THE COURT: Any objection?

8 [No response.]

9 THE COURT: All right. That's in evidence as
10 Plaintiff's 15.

11 (Plaintiff's Exhibit No. 15 was received into
12 evidence.)

13 BY MR. ROSE:

14 Q. Okay. So then first page says, "Dear Si, we
15 have prepared drafts of a new will and an amended and
16 restated trust agreement."

17 Are those the 2012 documents that were his
18 final ones?

19 A. Yes, they are.

20 Q. Okay. Then you sort of do the same thing you
21 did in 2008; you give a little summary of what the
22 estate plan is.

23 "Your amended and restated trust provides that
24 on your death, your assets will be divided among and
25 held in separate trusts for your then living

1 grandchildren," correct? I was reading paragraph -- the
2 middle paragraph.

3 A. Yes, I see that. Yes.

4 Q. I actually skipped the part above, which is
5 probably more important, which says -- in the middle of
6 the first paragraph, it says, "In addition, you have
7 exercised the special power of appointment granted to
8 you under Shirley's trust agreement in favor of your
9 grandchildren who survive you."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And so that was Simon's intent as
13 discussed on the conference call?

14 A. Yes, it was.

15 Q. Do you know if you made any changes to these
16 draft documents from May 24th until the day they were
17 signed?

18 A. I don't believe so. If I did, it was for
19 grammar or something else. The dispositive plan that
20 was laid out in this memo was ultimately the subject of
21 the documents that he executed in July.

22 Q. I'm going to hand you Exhibit 16, which is a
23 durable power of attorney.

24 If you flip to Exhibit 16, the last page, does
25 it bear a signature of Simon Bernstein?

1 A. Yes, it does.

2 Q. And it indicates you were a witness to the
3 signature?

4 A. Yes.

5 Q. Along with Kimberly Moran, who is someone from
6 your office?

7 A. Correct.

8 Q. And someone named Lindsay Baxley notarized the
9 documents?

10 A. Yes, she did.

11 Q. Do you know who Lindsay Baxley was?

12 A. Lindsay Baxley worked in Ted and Si's office.

13 Q. She was like a secretary?

14 A. Assistant to Ted, I believe, maybe.

15 Q. Okay. And if you look at --

16 MR. ROSE: Well, first of all, I'll move
17 Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 [No response.]

20 THE COURT: No objection made, then I'll
21 receive this as Plaintiff's 16.

22 (Plaintiff's Exhibit No. 16 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. If you look at the last page where the notary

1 block is there, it says "personally known" with an
2 underline, or "produced identification" with an
3 underline. And she's checked the box "personally
4 known" -- or she's checked the line.

5 Do you see that?

6 A. Yes.

7 Q. So do you believe that -- did you know Lindsay
8 Baxley by that point in time?

9 A. Yes, I did.

10 Q. And you believe -- she obviously knew Simon,
11 she knew Kim Moran from other dealings between your
12 offices?

13 A. Yes.

14 Q. Okay. And did you all sign this durable power
15 of attorney with testamentary formalities?

16 A. Yes, we did.

17 Q. And what's the date of that?

18 A. July 25, 2012.

19 Q. I'm going to approach with Exhibit 4, and ask
20 you if you recognize Exhibit 4?

21 A. Yes, I do.

22 Q. Okay. And what is Exhibit 4?

23 A. This is Si's new will that he executed in
24 2012, on July 25th, the same day as that durable power
25 of attorney.

1 Q. Now, were you present when Simon executed his
2 new will, which is Exhibit 4?

3 A. Yes, I was.

4 Q. If you turn to the last page --

5 Well, actually, if you turn to the first page,
6 does it say "copy" and bear a clerk's stamp?

7 A. It does.

8 Q. Okay.

9 MR. ROSE: I would represent to the Court that
10 I went to the clerk's office -- unlike with
11 Shirley's will, I went to the clerk's office and
12 obtained a -- like, a copy made by the clerk of the
13 document itself, rather than have the typewritten
14 conformed copy.

15 MR. BERNSTEIN: Can I object to that?

16 THE COURT: What's the objection?

17 MR. BERNSTEIN: Is he making a statement? I'm
18 not sure --

19 THE COURT: You're asking me a question. I
20 don't know.

21 MR. BERNSTEIN: I'm objecting. Is that a
22 statement?

23 THE COURT: The objection is? What are you
24 objecting to?

25 MR. BERNSTEIN: With the statement being

1 from --

2 THE COURT: Okay. That was a statement by
3 somebody who's not a sworn witness, so I'll sustain
4 the objection.

5 MR. BERNSTEIN: And the chain of custody of
6 the document, I'm just trying to clarify that.
7 Okay.

8 THE COURT: The objection was to the
9 statement. I've sustained the objection.

10 Next question, please.

11 BY MR. ROSE:

12 Q. Unlike the trust, how many originals of a will
13 do you have the client sign?

14 A. There's only one.

15 Q. And then you give the client the one with the
16 typewritten -- you call it conformed copy?

17 A. We conform the copy of the will.

18 Q. And after Simon died, was your law firm
19 counsel for the personal representative of the Estate of
20 Simon Bernstein?

21 A. Yes, we were.

22 Q. Did you file the original will with the court?

23 A. Yes, we did.

24 Q. Is it your belief that the original of this
25 document is somewhere in the Palm Beach County Court

1 system with the clerk's office?

2 A. Yes, I do.

3 MR. ROSE: I'd move Exhibit 4 in evidence,
4 Your Honor.

5 THE COURT: All right. Any objection?

6 [No response.]

7 MR. BERNSTEIN: No objection stated, I'll
8 receive this as Plaintiff's 4.

9 (Plaintiff's Exhibit No. 4 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. Now, if you turn to the next to the last page
13 of Exhibit --

14 A. Yes.

15 Q. -- Exhibit 4, you'll see it bears a signature
16 of Simon Bernstein and two witnesses, yourself and
17 Kimberly Moran, who all assert that you signed in the
18 presence of each other?

19 A. Yes.

20 Q. And then in the next page, it has what would
21 be a self-proving affidavit?

22 A. Correct.

23 Q. Now, if you look at the signature block where
24 the notary signed, where it says "who is personally
25 known to me," it doesn't seem to have a check box there.

1 It just says "who is personally known to me or who has
2 produced [blank] as identification," right?

3 A. Correct.

4 Q. Is this the same person who notarized the
5 exhibit we just put in evidence, Exhibit 15, the durable
6 power of attorney -- 16, the durable power of attorney?

7 A. Yes.

8 Q. Okay. And again, with regard to
9 Exhibit 4 -- strike that.

10 Do you recall where you signed Exhibit 4?

11 A. Yes.

12 Q. In whose office?

13 A. This was also done in Si's office.

14 Q. Okay. So you took -- you went personally
15 again, along with Kim Moran, as your practice, to make
16 sure that the documents were signed properly; true?

17 A. Correct.

18 Q. And that's important because, if the documents
19 aren't properly signed, they might not be valid and
20 enforceable?

21 A. That's correct.

22 Q. And I'm going to hand you Exhibit 5. This is
23 the Simon L. Bernstein Amended and Restated Trust
24 Agreement.

25 Was that signed the same day, at the same

1 time, with the same procedures?

2 A. Yes, it was.

3 Q. And would this have been signed with three
4 originals?

5 A. Yes, it would be.

6 MR. ROSE: I would move Exhibit 5 into
7 evidence, Your Honor.

8 THE COURT: Any objection?

9 [No response.]

10 THE COURT: All right. That's in evidence as
11 Plaintiff's 5.

12 (Plaintiff's Exhibit No. 5 was received into
13 evidence.)

14 BY MR. ROSE:

15 Q. Now, we looked at the history when you did the
16 first set of documents. In the second set, you started
17 in February through July.

18 Did you have a number of telephone conferences
19 with Simon during that time?

20 A. Yes, we did.

21 Q. And at least a couple of face-to-face
22 meetings?

23 A. Yes, we did.

24 Q. Did at any time Simon give you any indication
25 that he was not fully mentally sharp and aware and

1 acting of his own volition?

2 A. Nope. He was Si that we had known since 2007.

3 Q. I'll close with Exhibit 17. This is a letter
4 you sent to Simon Bernstein, enclosing a copy of his
5 conformed will for him.

6 A. Yes, it is.

7 Q. And it's dated the 26th, the day after he
8 signed the documents?

9 A. Correct.

10 Q. And did you also leave him with two of the
11 originals of his trust?

12 A. Yes, we did.

13 MR. ROSE: I move -- did I move 17 in? Or I
14 will move it in.

15 THE COURT: Number 7, is it?

16 MR. ROSE: Seventeen, sir.

17 THE COURT: Oh, I'm sorry.

18 Any objection?

19 [No response.]

20 THE COURT: All right. Then that's in
21 evidence as Plaintiff's 17.

22 (Plaintiff's Exhibit No. 17 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. Now, Simon passed away on September 13, 2012.

1 Does that sound right?

2 A. Yes, it does.

3 Q. I have Exhibit 18 as his death certificate.

4 MR. ROSE: I'll just move 18 into evidence.

5 THE COURT: Any objection?

6 [No response.]

7 THE COURT: All right. That's in evidence as
8 Plaintiff's 18.

9 (Plaintiff's Exhibit No. 18 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. So that's the death certificate for Simon
13 Bernstein.

14 Did you have any further discussions or
15 meetings with Simon after he signed the will and trust
16 in 2012 and before he died?

17 A. Not that I recall, no.

18 Q. And you filed a notice of administration,
19 opened an asset, published it in the Palm Beach Daily
20 Review, did what you had to do?

21 A. Yes, we did.

22 Q. And you and Mr. Tescher were the personal
23 representatives of the estate?

24 A. Yes, we were.

25 Q. And you and Mr. Tescher became the successor

1 trustees of Simon's amended trust after he passed away?

2 A. Yes, we did.

3 Q. I guess while he was still alive, he was still
4 the sole trustee of his trust, which was revocable
5 still?

6 A. Correct.

7 Q. And then upon his death, at some point, did
8 Ted Bernstein become aware that he was going to become
9 the successor trustee to the Shirley trust?

10 A. Yes. We had a meeting with Ted.

11 Q. And that was the first time he learned about
12 the contents of her trust, as far as you know?

13 A. Correct.

14 Q. Initially, did anybody object to the documents
15 or the fact that the beneficiaries were supposed to be
16 the 10 grandchildren?

17 A. No.

18 Q. When was there first some kind of an objection
19 or a complaint?

20 A. I can't recall exactly when it happened.

21 Q. Okay. Did you at some point get a letter from
22 a lawyer at the Tripp Scott firm?

23 A. Yes, we did.

24 Q. Okay. I think she was asking you about
25 something called the status of something called I View

1 It Company? Do you recall that?

2 A. Vaguely.

3 Q. Did you know what the Iviewit company was
4 before you received a letter from the Tripp Scott
5 lawyer?

6 A. I'm not sure. I'm not sure. I know today. I
7 can't tell if I'm answering because I know about it
8 today or if I knew about it at that time.

9 Q. Okay. And did -- was she asking for some
10 documents from you?

11 A. Is this Ms. Yates?

12 Q. Yes.

13 A. Yes.

14 Q. And did you provide her with certain
15 documents?

16 A. She had asked for copies of all of Shirley's
17 and Si's estate planning documents.

18 Q. And did you provide her with all of the
19 documents?

20 A. Yes, we did.

21 Q. Was one of the documents that you provided her
22 not an accurate copy of what Shirley had executed during
23 her lifetime?

24 A. That is true.

25 Q. Okay. And I guess I'll hand you Exhibit 6,

1 and this -- is Exhibit 6 a document that is not a
2 genuine and valid testamentary document of Shirley
3 Bernstein?

4 A. That's correct.

5 Q. Can you explain to the Court why Exhibit 6 was
6 prepared and the circumstances?

7 A. It was prepared to carry out the intent of
8 Mr. Bernstein in the meeting that he had had with his
9 five children, and perhaps a vague -- or a layman -- a
10 layman can make a mistake reading Shirley's documents
11 and not understand who the intended beneficiaries were
12 or what powers I had. So this document was created.

13 Q. Is it your belief that under the terms of
14 Shirley's document from -- the ones she actually signed,
15 that Simon had the power to appoint the funds to the ten
16 grandchildren?

17 A. Yes. We -- we prepared the documents that
18 way, and our planning transmittal letter to him
19 reflected that.

20 Q. And this document is, I think you said, to
21 explain it to a layperson in simpler fashion?

22 A. It was created so that the person that, you
23 know, didn't read estate planning documents and prepare
24 estate planning documents for a living -- you know,
25 there was no intent to cut out Pam and Ted's children,

1 basically.

2 Q. Now, did you ever file this exhibit in the
3 courthouse?

4 A. No, we did not.

5 Q. Did you ever use it for any purpose?

6 A. No, we did not.

7 Q. Was it at one point provided to Eliot's
8 counsel?

9 A. Yes, it was.

10 Q. Now, the fact -- putting aside this document,
11 were any of the other documents that we're talking about
12 in any way altered or changed from the ones that were
13 signed by Shirley or Simon?

14 A. No, they were not.

15 Q. Now, after these issues came to light, did
16 Mr. Eliot Bernstein begin to attack you through the
17 internet and through blogging and things like that?

18 A. He was doing that long before this document
19 came to light.

20 Q. Okay. What was Eliot doing?

21 A. His first thing that he did was -- with
22 respect to the courts, was to file an emergency petition
23 to freeze assets and after his brother as successor
24 trustee of his mother's trust had sold the condo.

25 MR. BERNSTEIN: Your Honor, can I object to

1 this line of questioning for relevance to validity?

2 THE COURT: What's the line of questioning
3 you're talking about?

4 MR. BERNSTEIN: The slander defamation going
5 on about me with, you know, what I do and --

6 THE COURT: Well, I wasn't aware there's a
7 line of questioning going on. There is a question.
8 You've objected to it.

9 MR. BERNSTEIN: Yes.

10 THE COURT: What's the objection to that
11 question?

12 MR. BERNSTEIN: The relevancy to a validity
13 hearing.

14 THE COURT: Okay. Can I have the court
15 reporter read the question back?

16 (A portion of the record was read by the
17 reporter.)

18 THE COURT: What is the relevance of whether
19 this guy's posting on Facebook that's negative or
20 not?

21 MR. ROSE: Well, a couple of things, but,
22 primarily, we're just trying to determine whether
23 these documents are valid.

24 THE COURT: Right.

25 MR. ROSE: And he is the only one who's saying

1 they're not valid, so I want to give some
2 explanation as to why he's saying they're not
3 valid, as opposed to --

4 THE COURT: I don't care why he's saying
5 they're valid or invalid. I'll wait to see what
6 the facts are. So I'll sustain the objection.

7 MR. ROSE: That's fine.

8 BY MR. ROSE:

9 Q. Did Simon Bernstein make any special
10 arrangements, other than -- strike that.

11 Did Simon or Shirley make any special
12 arrangements, other than the testamentary documents that
13 are admitted into evidence, for special benefits for
14 Eliot Bernstein and his family?

15 A. No, they did not.

16 Q. Any special education trusts, other than
17 the -- these five documents? And I believe there was
18 some shares of stock that were put in trust for all ten
19 grandchildren, right?

20 A. There was no special arrangements made other
21 than the estate planning documents.

22 Q. After Simon died, did Eliot claim to you that
23 Simon was supposed to have made some special
24 arrangements for him?

25 MR. BERNSTEIN: Object to the relevancy again.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 BY MR. ROSE:

4 Q. Did he ever give you an indication how much
5 money he thought he was going to inherit when his
6 father died, or his children would inherit when his
7 father died?

8 A. Through his subsequent attorney, yes, he did.

9 Q. And how much money did he indicate he thought
10 there should be?

11 A. I heard a number from one of his attorneys of
12 40- to a \$100 million.

13 Q. Are you aware of any assets that Simon
14 Bernstein had other than what he disclosed to you at the
15 two times that we've looked at in 2007 and again in
16 February of 2012?

17 A. No, I am not.

18 MR. ROSE: No further questions, Your Honor.

19 THE COURT: All right. Thanks.

20 Is there any cross?

21 MR. BERNSTEIN: Yes.

22 MR. MORRISSEY: Judge, I have questions as
23 well.

24 THE COURT: Okay. Well, then, let me have the
25 direct finished. That way, all the

1 cross-examination can take place without
2 interruption. So everybody make sure you're
3 fitting within the Plaintiff's side of the room's
4 time limitations. We'll strictly obey those.

5 CROSS (ROBERT SPALLINA)

6 BY MR. MORRISSEY:

7 Q. Good afternoon, Mr. Spallina. My name's John
8 Morrissey. I represent four of the adult grandchildren
9 of Simon Bernstein.

10 And since we're here today about validity, I'm
11 just going to go over, and try to be very brief,
12 concerning the execution of these documents and your
13 knowledge about the execution.

14 Exhibit 1, which has been entered as the will
15 of Shirley Bernstein, I'd ask you to direct your
16 attention to that document. And I'm looking here at
17 page 7. I ask that you turn to page 7 of Exhibit 1.

18 Were you a witness of this document, this will
19 that was executed by Shirley Bernstein on May 20th of
20 2008?

21 A. Yes, I was.

22 Q. And was Diana Banks the other witness?

23 A. Yes, she was.

24 Q. And did you and Diana witness Mrs. Bernstein's
25 execution of this document?

1 A. Yes, we did.

2 Q. You were present during her execution?

3 A. Yes, we were.

4 Q. And was she present during your execution of
5 this document as a witness?

6 A. Yes, she was.

7 Q. And was she, Shirley Bernstein, present during
8 Diana Banks' execution of this document?

9 A. Yes, she was.

10 Q. Okay. And I'm again focused on this
11 Exhibit No. 1, this will of Shirley Bernstein dated
12 May 20th of 2008.

13 Is it your opinion that at the time Shirley
14 Bernstein executed this document she understood
15 generally the nature and extent of her property?

16 A. Yes, she did.

17 Q. Okay. And at the time Shirley Bernstein
18 executed Exhibit 1, did she have a general understanding
19 of those who would be the natural objects of her bounty?

20 A. Yes, she did.

21 Q. Okay. And at the time she -- Shirley
22 Bernstein executed Exhibit 1, did she have a general
23 understanding of the practical effect of this will?

24 A. I believe she did.

25 Q. Okay. And in your opinion, was Shirley

1 Bernstein unduly influenced by any beneficiary of
2 Exhibit 1 in connection with its execution?

3 A. Not to my knowledge.

4 Q. Okay. And do you have any knowledge of any
5 beneficiary or anyone actively procuring Exhibit 1?

6 A. No, I do not.

7 Q. Okay. Moving on to Exhibit 2, which is
8 Shirley Bernstein's trust executed on the same date,
9 that is May 20th of 2008, I'll direct your attention to
10 page 27 of Exhibit No. 2. And it appears that Shirley
11 Bernstein executed that document on May 20th of 2008.
12 And the witnesses were yourself and Traci -- I can't
13 read her last name.

14 A. Traci Kratish.

15 Q. Okay. Did Shirley Bernstein execute
16 Exhibit No. 2 in the presence of both you and Traci
17 Kratish?

18 A. Yes, she did.

19 Q. Okay. And did you execute Exhibit No. 2 in
20 the presence of Shirley Bernstein and Traci Kratish?

21 A. Yes, I did.

22 Q. Okay. And did Traci Kratish execute
23 Exhibit No. 2 in your presence and Shirley Bernstein's
24 presence?

25 A. Yes, she did.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 2, which is her 2008 trust, is it
3 your opinion that she had a general understanding of the
4 nature and extent of her property?

5 A. Yes, she did.

6 Q. Okay. And at the time that Shirley Bernstein
7 executed Exhibit No. 2, is it your opinion that she
8 understood generally the relationship of those who
9 would -- were the natural objects of her bounty?

10 A. Yes.

11 Q. Okay. And at the time Shirley Bernstein
12 executed Exhibit No. 2, is it your opinion that she
13 generally understood the practical effect of this
14 document?

15 A. I believe she did.

16 Q. Okay. And did you have any belief that
17 Shirley Bernstein was unduly influenced in connection
18 with -- by any beneficiary in connection with her
19 execution of Exhibit No. 2?

20 A. Not to my knowledge.

21 Q. Okay. And do you know or have any information
22 about any beneficiary or anyone else actively procuring
23 Exhibit No. 2?

24 A. I do not.

25 Q. Okay. And with respect -- now we'll move on

1 to Exhibit No. 3, which is the first amendment of
2 Shirley Bernstein's trust, executed on November 18th of
3 2008. And I'll direct your attention on that Exhibit 3
4 to Page No. 2. And on Page No. 2 --

5 Well, let me ask this question. Did Shirley
6 Bernstein execute Exhibit No. 3 in the presence of both
7 you and Rachel Walker?

8 A. Yes, she did.

9 Q. Okay. And did you execute Exhibit No. 3 in
10 the presence of Shirley Bernstein and Rachel Walker?

11 A. Yes, I did.

12 Q. And did Rachel Walker execute this document,
13 Exhibit No. 3, in the presence of Shirley Bernstein and
14 yourself?

15 A. Yes, she did.

16 Q. Okay. And at the time Exhibit No. 3 was
17 executed, is it your opinion that Ms. Bernstein
18 understood generally the nature and extent of her
19 property?

20 A. Yes, I believe so.

21 Q. And is it your opinion that at the time
22 Shirley Bernstein executed Exhibit No. 3, she generally
23 understood the relationship of those who would be the
24 natural objects of her bounty?

25 A. Yes, I believe so.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 3, is it your opinion that she
3 generally understood the practical effect of this trust
4 amendment?

5 A. Yes, I believe so.

6 Q. Okay. And do you have any knowledge or
7 information about any beneficiary or any other person
8 unduly influencing Shirley Bernstein to execute
9 Exhibit No. 3?

10 A. I do not.

11 Q. Okay. And do you have any knowledge or
12 information about any person, beneficiary or otherwise,
13 actively procuring Exhibit No. 3?

14 A. I do not.

15 Q. Okay. Moving on to Exhibit No. 4 then, which
16 is the will of Simon Bernstein, and that is a will that
17 Mr. Bernstein executed on July -- yes, July 25 of 2012.
18 And let me direct your attention to page 7 of that will,
19 Exhibit No. 4.

20 And did Simon Bernstein execute this document
21 in the presence of you and Kimberly Moran on July 25,
22 2012?

23 A. Yes, he did.

24 Q. And did you execute this document,
25 Exhibit No. 4, as a witness in the presence of Simon

1 Bernstein and Kimberly Moran on that date?

2 A. Yes, I did.

3 Q. And did Kimberly Moran execute Exhibit No. 4
4 as a witness in the presence of Simon Bernstein and
5 yourself?

6 A. Yes, she did.

7 Q. Okay. And on this date -- or at the time of
8 execution on this date of July 25, 2012, did Simon
9 Bernstein understand in a general way the nature and
10 extent of his property?

11 A. Yes, he did.

12 Q. Okay. At the time that Exhibit No. 4 was
13 executed, did Simon Bernstein generally understand the
14 relationship of those who would be the natural objects
15 of his bounty?

16 A. Yes, he did.

17 Q. And at the time Exhibit No. 4 was executed,
18 did -- in your opinion, did Simon Bernstein understand
19 the practical effect of this will?

20 A. Yes, he did.

21 Q. Okay. And do you have any knowledge or
22 information about any person, whether beneficiary or
23 otherwise, actively procuring this Exhibit No. 4?

24 A. No, I do not.

25 Q. Do you have any information about any person,

1 beneficiary or otherwise, unduly influencing Simon
2 Bernstein to execute Exhibit No. 4?

3 A. I do not.

4 Q. Okay. And moving on to the last document
5 then, Exhibit No. 5, which is the Simon Bernstein
6 Amended and Restated Trust Agreement, and I'll direct
7 your attention to page 24 of that Exhibit No. 5.

8 On July 25, 2012, did Simon Bernstein execute
9 this trust agreement in the presence of you and Kimberly
10 Moran?

11 A. Yes, he did.

12 Q. And did you execute this trust, Exhibit No. 5,
13 as a witness in front of Simon Bernstein and Kimberly
14 Moran?

15 A. I did.

16 Q. And did Kimberly Moran execute Exhibit No. 5
17 as a witness in front of Simon Bernstein and yourself?

18 A. She did.

19 Q. Okay. And at the time Simon Bernstein
20 executed Exhibit No. 5, in your opinion, did he
21 generally understand the nature and extent of his
22 property?

23 A. He did.

24 Q. And at the time Exhibit No. 5 was executed,
25 did Simon Bernstein, in your opinion, generally

1 understand the relationship of those who would be the
2 natural objects of his bounty?

3 A. He did.

4 Q. And did Simon Bernstein, when Exhibit No. 5
5 was executed, understand generally the practical effect
6 of this trust agreement?

7 A. Yes, he did.

8 Q. And at the time Exhibit No. 5 was executed, do
9 you have any knowledge about any person, whether
10 beneficiary or otherwise, unduly influencing
11 Mr. Bernstein, Simon Bernstein, to execute this
12 Exhibit No. 5?

13 A. Nothing that I'm aware of.

14 Q. Okay. And do you have any knowledge or
15 information about any person, whether beneficiary or
16 otherwise, actively procuring Exhibit No. 5?

17 A. I do not.

18 MR. MORRISSEY: I have no further questions,
19 Judge.

20 THE COURT: All right. Thanks.

21 Now, is there any cross? You're not required
22 to ask any questions, but you just need to let me
23 know if you're going to.

24 MR. BERNSTEIN: Oh, are you asking me? I had
25 no idea.

1 THE COURT: I'm not asking you. I'm just
2 telling you, if you have questions for the witness,
3 this is your opportunity to ask them; if you don't
4 have any questions, you don't have to ask any. But
5 if you're going to, you have to start now.

6 CROSS (ROBERT SPALLINA)

7 BY MR. BERNSTEIN:

8 Q. Mr. Spallina, you were called today to provide
9 some expert testimony, correct, on the --

10 A. No, I was not.

11 Q. Oh, okay. You're just going based on your
12 doing the work as Simon Bernstein's attorney and Shirley
13 Bernstein's attorney?

14 A. Yes.

15 Q. Okay. Are you still an attorney today?

16 A. I am not practicing.

17 Q. Can you give us the circumstances regarding
18 that?

19 A. I withdrew from my firm.

20 Q. Are you under a consent order with the SEC?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. BERNSTEIN:

24 Q. Did you sign a consent order for insider
25 trading --

1 A. Yes, I did.

2 Q. -- with the SEC?

3 You did. Can you give us the circumstances of
4 your consent order?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: That won't be relevant. Please
7 move on to the next question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Were you -- did you plead to a felony crime?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 MR. BERNSTEIN: Well, it's relevant as to --

14 THE COURT: I didn't ask for argument.

15 MR. BERNSTEIN: Well, what did you say?

16 THE COURT: I didn't ask for argument. I
17 sustained the objection -- no, I sustained the last
18 objection. This one I'm overruling.

19 You can answer.

20 MR. BERNSTEIN: I can't ask him if he's a
21 felon?

22 THE COURT: You're asking the wrong guy.

23 MR. BERNSTEIN: Okay. Are --

24 THE COURT: The witness is -- you asked the
25 question.

1 BY MR. BERNSTEIN:

2 Q. Are you a convicted felony?

3 THE COURT: Let's back up a second.

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: When you're asking for a ruling,
6 and I make one, then we're going to have the
7 witness answer.

8 MR. BERNSTEIN: Okay.

9 THE COURT: I made my ruling. I'm letting the
10 witness answer your earlier question, unless you're
11 withdrawing it. Are you withdrawing your earlier
12 question?

13 MR. BERNSTEIN: No.

14 THE COURT: You can answer the question, which
15 is, did you plead to a felony?

16 MR. BERNSTEIN: Sorry, sir.

17 THE WITNESS: I have not.

18 THE COURT: Okay. Next question.

19 BY MR. BERNSTEIN:

20 Q. Have you pled guilty to a misdemeanor?

21 A. I have not.

22 Q. Were you involved in a insider trading case?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained. Next question.

25 MR. BERNSTEIN: Does that mean he doesn't have

1 to answer that?

2 THE COURT: How many times have you been in
3 court?

4 MR. BERNSTEIN: Just a few where I've had to
5 do this.

6 THE COURT: You know how this works.

7 MR. BERNSTEIN: I really don't.

8 THE COURT: All right. If I sustain an
9 objection, that's means he does not answer the
10 question.

11 MR. BERNSTEIN: Okay. And overruled?

12 THE COURT: If I overrule an objection, that
13 means the witness does answer the question.

14 MR. BERNSTEIN: Okay.

15 THE COURT: And I've asked you to ask your
16 next question.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. Is that your picture on the Florida Law
20 Review, SEC case settled against Florida attorneys?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 Do you have any questions on the issues that I
24 have to decide in this case?

25 MR. BERNSTEIN: Well, his testimony is based

1 on his truthfulness.

2 THE COURT: My question is, do you have any
3 questions you want to ask about the issues relevant
4 to this case?

5 MR. BERNSTEIN: Yes. This is relevant to this
6 case.

7 THE COURT: I disagree.

8 MR. BERNSTEIN: Oh, okay.

9 THE COURT: I thought I made that very clear
10 in my ruling. You probably want to move on to a
11 relevant issue.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Mr. Spallina, have you been in discussion with
15 the Palm Beach County Sheriff's Office regarding the
16 Bernstein matters?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer that.

20 THE WITNESS: Yes, I have.

21 BY MR. BERNSTEIN:

22 Q. And did you state to them that you
23 fraudulently altered a Shirley trust document and then
24 sent it through the mail to Christine Yates?

25 A. Yes, I did.

1 Q. Have you been charged with that by the Palm
2 Beach County Sheriff yet?

3 A. No, I have not.

4 Q. Okay. How many times were you interviewed by
5 the Palm Beach County Sheriff?

6 MR. ROSE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Did you mail a fraudulently signed document to
10 Christine Yates, the attorney for Eliot Bernstein's
11 minor children?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. BERNSTEIN:

16 Q. And when did you acknowledge that to the
17 courts or anybody else? When's the first time you came
18 about and acknowledged that you had committed a fraud?

19 A. I don't know that I did do that.

20 Q. Well, you just said you went to the Palm Beach
21 County Sheriff and admitted altering a document and put
22 it in the mail.

23 THE COURT: Let me stop you there. If you
24 want to ask the witness questions, you're permitted
25 to do that. If you would like to argue with the

1 witness, that's not -- do you have any questions
2 you want to ask?

3 MR. BERNSTEIN: Yes.

4 BY MR. BERNSTEIN:

5 Q. So you sent a fraudulent document to Eli
6 Bernstein's minor children's counsel.

7 Can you tell us what that document did to
8 affect the dispositive Shirley trust document?

9 A. It has no effect.

10 Q. What was its intended effect of altering the
11 document?

12 A. To carry out your father's wishes in the
13 agreement that he had made with the five of you for a
14 layperson that would be reading the documents.

15 Q. You were carrying out his wishes by
16 fraudulently altering a document?

17 MR. ROSE: Objection.

18 THE COURT: Sustained.

19 That's argumentative. I don't want you to
20 argue with the witness. That's an argument.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Did the fraudulently altered document change
24 the beneficiaries that were listed in Shirley's trust?

25 A. They did not.

1 Q. Who are the beneficiaries of Shirley's trust?

2 A. It depends on -- under the trust instrument,
3 in the absence of Si exercising his power of
4 appointment, it would be yourself and your two sisters,
5 Lisa and Jill.

6 Q. Oh. So the only beneficiaries in Shirley's
7 trust are me, Lisa and Jill.

8 Is that directly or through a family trust?

9 A. Your father had established -- your parents
10 had established family trusts for the three of you to
11 receive assets from the trust.

12 Q. Okay. So in that document that you sent to
13 Christine Yates, did you include Ted and Pam's lineal
14 descendants under the amendment that you fraudulently
15 drafted and sent to her?

16 MR. ROSE: Objection. Argumentative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Did in any way the document that you
20 fraudulently altered and sent to Yates change the
21 beneficiaries from Eliot, Lisa and Jill and their lineal
22 descendants to anybody else?

23 THE COURT: May I ask a question?

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: This document that you're

1 referring to, is anybody asking me to probate that
2 document?

3 MR. BERNSTEIN: Well, it's part of the estate
4 plan. It's part --

5 THE COURT: Is anybody seeking relief, either
6 you or the other side, under that document?

7 MR. BERNSTEIN: Yeah. They're seeking to
8 change the beneficiaries of my mom's trust through
9 that document and others.

10 THE COURT: You're misperceiving my question.

11 MR. BERNSTEIN: Oh, okay. Sorry.

12 THE COURT: That document, which
13 is -- nobody's put it in evidence; I don't know
14 what it is, but it's -- that thing that you're
15 asking the witness about, is somebody seeking
16 relief based upon that document?

17 MR. ROSE: Absolutely not. The opposite.

18 THE COURT: All right. Are you seeking relief
19 based upon that document?

20 MR. BERNSTEIN: Yeah. Oh, absolutely.

21 THE COURT: All right. Are you claiming that
22 that document is subject to probate?

23 MR. BERNSTEIN: Yeah.

24 THE COURT: Is the lady who's giving you
25 advice your attorney?

1 MR. BERNSTEIN: No.

2 THE COURT: Ma'am, are you admitted to the bar
3 in Florida? Remember what I told you earlier.
4 I've let you sit there as a courtesy. Generally, I
5 don't let wives or friends or anybody else sit at
6 the table where the parties are because it confuses
7 me. But you're giving that guy advice and you're
8 also not listening to me, which I find odd, because
9 I'm going to have you move you back to the gallery
10 now. Please have a seat in the gallery. Please
11 have a seat in the gallery. Please have a seat in
12 the gallery. Soon. When courtesy is not returned,
13 courtesy is withdrawn. Please have a seat in the
14 gallery. Thank you.

15 Do you have any other questions of the
16 witness?

17 MR. BERNSTEIN: Can I submit this as evidence
18 to the Court?

19 THE COURT: Is that the document you've been
20 asking the witness about?

21 MR. BERNSTEIN: Yeah.

22 THE COURT: All right. Any objection to it
23 being received as an exhibit?

24 MR. ROSE: I don't have any objection to it
25 being received as an exhibit. But as Your Honor

1 noted, we aren't seeking to probate it, and we're
2 not suggesting it's valid in the first place.

3 THE COURT: All right. Well, let me see what
4 that document is, so then I'll see if I can make
5 some sense out of it.

6 You can't -- Gary's always afraid that if
7 somebody's not a member of the bar, they might do
8 something bad to me. Officers of the court aren't
9 allowed to do things bad to the judge. Other folks
10 don't know that. And so Gary watches out carefully
11 for my well-being.

12 MR. BERNSTEIN: Gotcha.

13 THE COURT: Okay. So this is a document
14 that's titled "First Amendment to Shirley Bernstein
15 Trust Agreement."

16 MR. BERNSTEIN: Correct.

17 THE COURT: And it's in the book that I've
18 been given earlier by the plaintiff as Tab 6.
19 You're seeking to put it into evidence as
20 Defendant's 1?

21 MR. BERNSTEIN: Okay.

22 THE COURT: Right?

23 MR. BERNSTEIN: Sure. Yes, sir.

24 THE COURT: You're offering it as an exhibit?

25 MR. BERNSTEIN: No, Evidence 1.

1 THE COURT: The objection to it is that it's
2 not relevant?

3 MR. ROSE: Not relevant. Right, relevance.
4 And it's also not something we're seeking to be
5 probated or treated as authentic and genuine.

6 THE COURT: Well, the other side is seeking to
7 use the terms of this document instead of the terms
8 of the amendment that's in evidence, right?

9 MR. ROSE: I don't believe that's what he's
10 doing.

11 THE COURT: I'm not sure what he's doing, but
12 in an abundance of caution, I'm going to receive it
13 for what relevance it might have. I don't perceive
14 any yet, but we'll see what happens.

15 So this is Defendant 1.

16 (Defendant's Exhibit No. 1 was received into
17 evidence.)

18 THE COURT: Any other questions of the
19 witness?

20 MR. BERNSTEIN: Sure.

21 BY MR. BERNSTEIN:

22 Q. You've testified here about Kimberly Moran.
23 Can you describe your relationship with her?

24 A. She's been our long-time assistant in the
25 office.

1 Q. Was she convicted of felony fraudulent
2 notarization in the Estate of Shirley Bernstein?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Overruled.

5 You're asking if she was convicted of a felony
6 with respect to the Estate of Shirley Bernstein?

7 You can answer the question.

8 MR. BERNSTEIN: Correct.

9 THE WITNESS: I believe she was.

10 BY MR. BERNSTEIN:

11 Q. And what was she convicted for?

12 A. She had notarized the waiver releases of
13 accounting that you and your siblings had previously
14 provided, and we filed those with the court.

15 Q. We filed those with the court.

16 Your law firm submitted fraudulent documents
17 to the court?

18 A. No. We filed -- we filed your original
19 documents with the court that were not notarized, and
20 the court had sent them back.

21 Q. And then what happened?

22 A. And then Kimberly forged the signatures and
23 notarized those signatures and sent them back.

24 Judge Colon has a rule in his court to have
25 those documents notarized, even though that's not the

1 requirement under the Florida Probate Code.

2 Q. So when you didn't follow the rule, you
3 frauded [sic] and forged the document?

4 MR. ROSE: Objection. Argumentative.

5 THE COURT: Sustained.

6 THE WITNESS: I had nothing to do with that.

7 THE COURT: You've got to stop a second.

8 MR. BERNSTEIN: Yes, sir.

9 THE COURT: If you continue to argue with the
10 witness, then I'll assume you don't have any more
11 questions. I sustained that last objection to
12 argumentative.

13 MR. BERNSTEIN: I'm a little confused --

14 THE COURT: I'm sorry about your confusion,
15 but there are ways you could have dealt with that
16 before this trial. If you are confused during the
17 trial, you better get unconfused as quickly as you
18 can because bad things will happen. And I don't
19 want bad things to happen. I want to get the facts
20 so that I can accurately decide the case on its
21 merits.

22 Stop arguing, ask questions, let the witness
23 answer, and listen to any rulings that I make on
24 the objections. That's the last time I'll repeat
25 that advice to you. Thank you.

1 BY MR. BERNSTEIN:

2 Q. What law firm submitted those documents to the
3 court?

4 A. Tescher & Spallina, P.A.

5 Q. Are you a partner in that firm?

6 A. I was.

7 Q. So your firm that you were a partner with sent
8 in documents that were fraudulent to the court?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Did Tescher & Spallina law firm submit
13 Kimberly Moran's forged and fraudulent document waivers
14 to the court?

15 MR. ROSE: Objection. Cumulative.

16 THE COURT: He already said he did.

17 MR. BERNSTEIN: What is that?

18 THE COURT: Cumulative means you've already
19 had that answer given.

20 MR. BERNSTEIN: No, I didn't have that.

21 THE COURT: He's already said that he did.

22 MR. BERNSTEIN: I'm asking if they deposited
23 them with the court.

24 THE COURT: And he said they didn't.

25 MR. BERNSTEIN: Well, I asked him, and he

1 said --

2 THE COURT: I won't argue with you. Do you
3 want to go on to the next item or not?

4 MR. BERNSTEIN: Oh, okay, I do.

5 THE COURT: Okay. Next question, please.

6 BY MR. BERNSTEIN:

7 Q. Did your office -- did you submit documents to
8 close the estate of Shirley with Simon as the personal
9 representative at a time Simon was dead?

10 A. We did.

11 Q. You did? Excuse me? I didn't hear an answer.

12 A. I said yes.

13 Q. So Shirley's estate was closed by a dead
14 personal representative.

15 Can you give me the time that the estate was
16 closed by Simon while he was dead?

17 MR. ROSE: Objection. Argumentative.

18 THE COURT: Overruled.

19 You can answer.

20 THE WITNESS: I believe it was October,
21 November 2012.

22 BY MR. BERNSTEIN:

23 Q. Do you want to check your records on that?

24 A. I believe it was after his death. I know he
25 died September 13, 2012. And we had received late from

1 one of your sisters the signed waiver. So it was
2 probably in November, somewhere around there.

3 Q. You stated that Simon -- that Kimberly did
4 five waivers for the siblings that she sent back in
5 fraudulently to the court through your law firm.

6 Did she also do a fraudulent forged signature
7 of a waiver for Simon?

8 A. I'm not sure. I guess if you're saying she
9 did --

10 Q. Well, the court has on file a waiver of
11 Simon's that she's admitted to.

12 A. We filed all of the waivers originally with
13 the court all signed by the appropriate parties, and the
14 court kicked those back. And she forged and notarized
15 new documents and sent them to the court. She felt she
16 had made a mistake.

17 Q. Okay. Are you aware of an April 9th full
18 waiver that was allegedly signed by Simon and you?

19 A. Yeah. That was the waiver that he had signed.
20 And then in the May meeting, we discussed the five of
21 you, all the children, getting back the waivers of the
22 accountings.

23 Q. Okay. And in that April 9th full waiver you
24 used to close my mother's estate, does Simon state that
25 he has all the waivers from all of the parties?

1 A. He does. We sent out -- he signed that, and
2 we sent out the waivers to all of you.

3 Q. Okay. So on April 9th of 2012, Simon signed,
4 with your presence, because your signature's on the
5 document, a document stating he had all the waivers in
6 his possession from all of his children.

7 Had you sent the waivers out yet as of
8 April 9th?

9 THE COURT: What is it that you want the
10 witness to answer? There was several questions.

11 MR. BERNSTEIN: Oh, compounded a little bit?

12 THE COURT: Yes.

13 MR. BERNSTEIN: Sorry.

14 THE COURT: So you even --

15 MR. BERNSTEIN: I'll kick that back.

16 THE COURT: So you even know the lingo of the
17 objections.

18 MR. BERNSTEIN: I'll kick that back to one at
19 a time, because it's an important point.

20 BY MR. BERNSTEIN:

21 Q. April 9th, 2012, you have a signed full waiver
22 of Simon's that says that he is in possession of all of
23 the signed waivers of all of the parties?

24 A. Standard operating procedure, to have him
25 sign, and then to send out the documents to the kids.

1 Q. Was Simon in possession -- because it's a
2 sworn statement of Simon saying, I have possession of
3 these waivers of my children on today, April 9th,
4 correct, the day you two signed that?

5 Okay. So if you hadn't sent out the waivers
6 yet to the --

7 A. I'm not certain when the waivers were sent
8 out.

9 Q. Were they sent out after the --

10 A. I did not send them out.

11 Q. Okay. More importantly, when did you receive
12 those? Was it before April 9th or on April 9th?

13 A. We didn't receive the first one until May.
14 And it was your waiver that we received.

15 Q. So how did you allow Simon, as his attorney,
16 to sign a sworn statement saying he had possession of
17 all of the waivers in April if you didn't get mine 'til
18 May?

19 MR. ROSE: Objection. I think it's relevance
20 and cumulative. He's already answered.

21 THE COURT: What's the relevance?

22 MR. BERNSTEIN: Oh, this is very relevant.

23 THE COURT: What is the relevance on the issue
24 that I have to rule on today?

25 MR. BERNSTEIN: On the validity? Well, it's

1 relevant. If any of these documents are relevant,
2 this is important if it's a fraud.

3 THE COURT: I'll sustain the objection.

4 MR. BERNSTEIN: Okay. Can I -- okay.

5 BY MR. BERNSTEIN:

6 Q. When did you get -- did you get back prior to
7 Simon's death all the waivers from all the children?

8 A. No, we did not.

9 Q. So in Simon's April 9th document where he
10 says, he, Simon, on April 9th has all the waivers from
11 his children while he's alive, and you didn't even get
12 one 'til after he passed from one of his children, how
13 could that be a true statement?

14 MR. ROSE: Objection. Relevance. Cumulative.

15 THE COURT: Sustained.

16 Here's what I'm going to decide at the end of
17 the day; I'm going to decide whether Shirley's 2008
18 will and trust and 2008 amendment are valid and
19 enforceable. I'm going to decide whether Simon's
20 2012 will and 2012 trust documents are valid and
21 enforceable. You have a lot more on your mind than
22 I have on mine. You do. Right? But those are the
23 things that I'm working on. So I'm focused like a
24 laser and you're focused more like a shotgun. I'm
25 telling you this so that you can focus more tightly

1 on the questions you're asking and the facts you're
2 developing so they'll help me make an accurate
3 decision on those things that I'm going to decide
4 today. You can keep asking questions that don't go
5 anywhere, but I would hope that you'll adjust your
6 approach so that you'll help me make an accurate
7 decision.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. And on validity, let's just get right to that
11 real quick. You've testified to a lot of documents here
12 today, correct, of the estate documents you drafted,
13 correct?

14 A. Yes, I did.

15 Q. Did you gain any pecuniary interest, did you
16 gain any titles in those documents?

17 A. Pecuniary interest? No. I was named by your
18 father as personal representative and trustee of his
19 trust.

20 Q. And so you executed -- you drafted the
21 documents, you signed them as a witness, and you gained
22 interest in the documents, correct?

23 A. No, I did not.

24 Q. You didn't gain interest as a trustee --

25 MR. ROSE: Objection.

1 BY MR. BERNSTEIN:

2 Q. -- or a personal representative of those
3 documents?

4 MR. ROSE: Objection. Cumulative. Asked and
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was named as his personal
8 representative and trustee, along with my partner.

9 BY MR. BERNSTEIN:

10 Q. Did you witness the document?

11 A. I did.

12 Q. Did you draft the document?

13 A. I did.

14 Q. Okay. You mentioned there was Kimberly Moran
15 there at the signing of these documents, correct?

16 A. She was.

17 Q. Okay. Can you point her out, because I'm
18 going to need her to testify as to the validity?

19 A. I do not see her in the courtroom.

20 Q. Okay. You mentioned a Traci Kratish. Can you
21 point her out in the courtroom today to validate the
22 documents?

23 A. I don't see Traci in the room either.

24 Q. So she was another witness that is not here
25 present to validate the documents today? Well, it's

1 awful -- okay.

2 Is Kimberly Moran here who notarized the
3 documents.

4 MR. ROSE: Objection. Cumulative. Asked that
5 a minute ago.

6 MR. BERNSTEIN: I didn't -- did I? Was it
7 Moran --

8 THE COURT: No, I thought it was some other
9 name.

10 MR. BERNSTEIN: So did I.

11 THE COURT: Is Kimberly here?

12 THE WITNESS: She's not.

13 THE COURT: Okay. Next question.

14 BY MR. BERNSTEIN:

15 Q. Okay. Being a former estate planning
16 attorney. To validate a document, wouldn't you have the
17 parties who witnessed and notarized and signed present?

18 MR. ROSE: Objection. Relevance.

19 Misstates --

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Is it necessary to validate documents with the
23 necessary notaries and witnesses present?

24 MR. ROSE: Objection. Calls for a legal
25 conclusion.

1 THE COURT: Well, I'm the one that's going
2 make that decision. I don't care what the witness
3 says about the law.

4 MR. BERNSTEIN: I gotcha. Okay.

5 THE COURT: So this would be a good time for
6 us to take a pause. We're not making headway.

7 You ever here of cavitation when it comes to
8 boat propellers?

9 MR. BERNSTEIN: No.

10 THE COURT: Okay. I don't know a lot about
11 the physics of it, but a boat goes forward based on
12 a propeller spinning in the water. And it happens
13 sometimes in racing boats, maybe other boats too,
14 that you get the propeller going so fast or you do
15 something so much with the propeller that it
16 cavitates, which means that it's not actually
17 pushing in the water. It's making a lot of noise.
18 It's spinning like crazy. It's furiously working,
19 but it's not propelling the boat forward. I want
20 to suggest to you that you've hit a point of
21 cavitation. So this would be a good time for us to
22 take our lunch break so that when we get back we'll
23 go forward with this ship that is our trial.

24 MR. BERNSTEIN: How long?

25 THE COURT: It'll be until 1:30.

1 MR. BERNSTEIN: Okay.

2 THE COURT: That'll give everybody a time to
3 revive, if necessary, and we'll reconstitute
4 ourselves at 1:30. Thanks.

5 (A break was taken.)

6 (Proceedings continued in Volume 2.)

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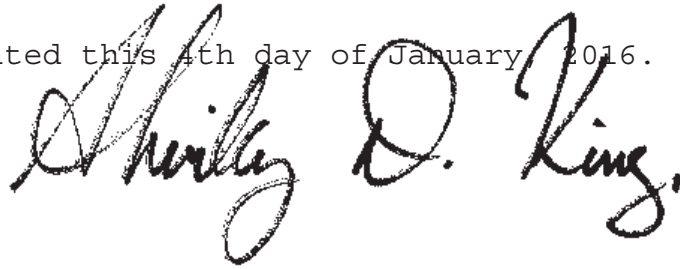
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January 2016.



Shirley D. King, RPR, FPR

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1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE No. 502014CP003698XXXXNB

4 TED BERNSTEIN,

5 Plaintiff,

6 -vs-

7 DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
8 LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

9 Defendants.

10 TRIAL BEFORE THE HONORABLE
11 JOHN L. PHILLIPS
12 VOLUME 2 PAGES 117 - 260

13 Tuesday, December 15, 2015
14 North County Courthouse
15 Palm Beach Gardens, Florida 33410
16 9:43 a.m. - 4:48 p.m.

17 Reported By:
18 Shirley D. King, RPR, FPR
19 Notary Public, State of Florida
20 West Palm Beach Office Job #1358198- VOL 2
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P R O C E E D I N G S

- - -

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THE COURT: We're ready to resume. Our witness is still under oath.

Is there any further cross-examination?

MR. BERNSTEIN: Yes.

THE COURT: Okay.

CROSS (ROBERT SPALLINA) (Cont'd)

BY MR. BERNSTEIN:

Q. Mr. Spallina, just to clarify --

MR. ROSE: Your Honor, can he just stand at the podium?

THE COURT: Okay. Well, use the podium. Your microphone will help explain your questions. But you can walk up there. If you need to show the witness a document or something, that's fine.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you -- are you a member of the Florida Bar?

A. Yes, I am.

Q. Currently?

A. Yes, I am.

Q. Okay. You said before you surrendered your

1 license.

2 A. I said I withdrew from my firm. It wasn't
3 that I was not practicing.

4 Q. Okay. In the chain of custody of these
5 documents, you stated that there were three copies made?

6 A. Yes.

7 Q. Do you have those three original trust copies
8 here?

9 A. I do not.

10 MR. BERNSTEIN: Does anybody?

11 THE COURT: Do you have any other questions of
12 the witness?

13 MR. BERNSTEIN: Yeah. I wanted to ask him
14 some questions on the original documents.

15 THE COURT: Okay. Keep going.

16 BY MR. BERNSTEIN:

17 Q. Okay. So the original documents aren't in the
18 court?

19 A. I don't have them.

20 Q. Your firm is not in possession of any of the
21 original documents?

22 A. I'm not sure. I'm not at the firm anymore.

23 Q. When you left the firm, were there documents
24 still at the firm?

25 A. Yes, there were.

1 Q. Were you ordered by the court to turn those
2 documents over to the curator, Benjamin Brown?

3 A. I don't recall.

4 MR. ROSE: Objection. Can he clarify the
5 question, which documents? Because I believe the
6 curator was for the estate, and the original will
7 was already in file, and the curator would have no
8 interest in the trust --

9 THE COURT: Which documents? When you say
10 "those documents," which ones are you referring to?

11 MR. BERNSTEIN: Any of the trusts and estate
12 documents.

13 THE COURT: Okay. That's been clarified.
14 You can answer, if you can.

15 THE WITNESS: I believe that he was given -- I
16 believe all the documents were copied by
17 Mr. Pollock's office, and that he was given some
18 type of zip drive with everything. I'm not sure,
19 though. I couldn't --

20 BY MR. BERNSTEIN:

21 Q. Did the zip drive contain the original
22 documents?

23 A. Did not. I believe the original documents
24 came back to our office. Having said that, we would
25 only have -- when we made and had the client execute

1 three documents, two originals of those documents would
2 remain with the client, and then we would keep one
3 original in our file, except -- including, most of the
4 time, the original will, which we put in our safe
5 deposit box. So we would have one original of every
6 document that they had executed, including the original
7 will, and they would keep two originals of everything,
8 except for the will, which we would give them conformed
9 copies of, because there was only one original will.

10 Q. Okay. I asked a specific question. Did your
11 firm, after the court order of Martin Colin, retain
12 documents, original documents?

13 MR. ROSE: Objection. Sorry. I should have
14 let him finish.

15 MR. BERNSTEIN: -- original documents?

16 THE WITNESS: I believe --

17 MR. ROSE: Relevance and misstates the --
18 there's no such order.

19 THE COURT: Well, the question is, Did your
20 firm retain the original documents?

21 Is that the question?

22 MR. BERNSTEIN: Yes, sir.

23 THE COURT: Overruled.

24 Answer, please.

25 THE WITNESS: I believe we had original

1 documents.

2 BY MR. BERNSTEIN:

3 Q. After the date you were court ordered to
4 produce them to the curator?

5 MR. ROSE: Object -- that's the part I object
6 to.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. To your knowledge -- so, to your knowledge,
11 the documents can't all be here since they may be at
12 your firm today?

13 A. I don't practice at the firm anymore, so I'm
14 not sure where the documents are.

15 Q. Okay. And you said you made copies of all the
16 documents that you turned over to the curator? Did you
17 turn over any original documents as ordered by the
18 court?

19 MR. ROSE: Objection. Same objection.

20 There's no court order requiring an original
21 document be turned over.

22 THE COURT: What order are you referring to?

23 MR. BERNSTEIN: Judge Colin ordered when they
24 resigned due to the fraudulent alteration of the
25 documents that they turn over --

1 THE COURT: I just said, what order are you
2 referring to?

3 MR. BERNSTEIN: It's an order Judge Colin
4 ordered.

5 THE COURT: All right. Well, produce that
6 order so I can see it, because Judge Colton's [sic]
7 been retired for six or seven years.

8 MR. BERNSTEIN: Okay. I don't have it with
9 me, but...

10 THE COURT: Well, Judge Colton's a retired
11 judge. He may have served in some other capacity,
12 but he doesn't enter orders, unless he's sitting as
13 a replacement judge. And that's why I'll need to
14 see the order you're talking about, so I'll know if
15 he's doing that. Okay. Thanks. Next question.

16 BY MR. BERNSTEIN:

17 Q. Okay. Has anyone, to the best of your
18 knowledge, seen the originals while you were in custody
19 of them?

20 A. Yes.

21 Q. Okay. Who?

22 A. I believe Ken Pollock's firm was -- Ken
23 Pollock's firm was the firm that took the documents for
24 purposes of copying them.

25 Q. Did anybody ask you, refer copies to inspect

1 the documents?

2 A. Other than Ken Pollock's office, I don't
3 recall.

4 Q. Did I ask you?

5 A. Perhaps you did.

6 MR. BERNSTEIN: Okay. I'd like to go through
7 some of the documents with him real quick. But I
8 don't have my wife to hand me the documents, so
9 it's going to take me incredibly long. These are
10 just copies I have. Can I approach him?

11 THE COURT: All approaches are okay.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Are these the documents that you drafted,
15 Shirley's will and Shirley's trust agreement?

16 MR. ROSE: Your Honor, could I see what he's
17 handing the witness before he hands it to them?

18 THE COURT: Say again.

19 MR. ROSE: I don't know what he's handing the
20 witness.

21 THE COURT: All right. You'll need to show
22 the other side the documents that you're handing to
23 the witness so that they're looking at the same
24 thing you're talking about.

25 MR. ROSE: These are not accurate. These are

1 multiple things stapled together. I'd object to
2 the exhibit -- or the use of it.

3 THE COURT: Ma'am, if you come back up past
4 that bar one more time, you'll be in contempt of
5 court. I don't want you to be in contempt of
6 court. Do you understand my instruction?

7 MRS. BERNSTEIN: Yes.

8 THE COURT: Thank you.

9 MR. ROSE: I don't know if that's filed with
10 the court and I don't know that these are genuine.
11 And the second document has attached to it --

12 THE COURT: Well, you don't need to tell me
13 what the papers are. The thing that the person
14 who's asking the questions has to do is show you
15 the documents that he's going to show the witness.

16 MR. ROSE: Okay.

17 THE COURT: Then I intend to move forward. I
18 expect he'll show the witness the documents and
19 then he'll probably ask a question.

20 Am I right?

21 MR. BERNSTEIN: Do you want to see those?

22 THE COURT: Nope.

23 So then if there's an objection to the
24 documents coming in, if at some time they're
25 proffered as an exhibit, then I'll take the

1 objection.

2 Have you seen the documents that are in his
3 hand that are going to be shown to the witness?

4 MR. ROSE: Oh, yes, sir. I'm sorry.

5 THE COURT: Okay. That's fine.

6 Proceed.

7 BY MR. BERNSTEIN:

8 Q. Okay. Can you look at the initials on the
9 pages of that document and describe them -- describe
10 what they look like?

11 A. The initials?

12 Q. Yes.

13 A. On each page, there's an SB --

14 Q. Okay.

15 A. -- for your mother's initials.

16 Q. And it's clearly SB?

17 A. Is it clearly SB?

18 Q. Yeah. Looks like SB?

19 A. Yes, it's clearly SB.

20 Q. Okay. And on this will signed on the same
21 date by my mother in your presence, is that my mom's
22 initials? And does it look like an SB? Do they even
23 look similar?

24 A. Well, your mother was asked to sign these
25 documents.

1 Q. Okay.

2 A. When we execute a will, unlike the bottom of
3 the trust agreement where we initial the trust pages, on
4 the bottom of the will, she's supposed to sign her
5 signature. And which she has done at the bottom of each
6 page, is sign her signature consistent with the
7 signature page that she signed.

8 Q. So what you're saying is, she signed this
9 document, that she initialed this document?

10 A. Right. We only ask that for purposes of the
11 trust that they initial each page. For purposes of the
12 will, that they sign each page.

13 So this is the signature that she has -- this
14 is her signature on the bottom of this document.

15 Q. Well, there's no line saying that's her
16 signature, correct? There would be --

17 A. But that was our practice.

18 Q. Okay.

19 A. That was our practice, to have --

20 Q. Okay. You testified to my dad's state of mind
21 that he was fine.

22 Si was usual when you saw him from May through
23 his death; is that correct?

24 A. Are you speaking about 2012?

25 Q. Yes.

1 A. Correct.

2 Q. Are you aware of any medical problems my
3 father was having at that time?

4 A. No, I'm not.

5 Q. Are you aware of any stress he was under?

6 A. No, I was not.

7 Q. Mr. Rose had you read into or -- read into the
8 record a letter that I wrote with my waiver, saying,
9 anything -- I haven't seen the dispositive documents,
10 but I'll do anything, 'cause my dad is under stress, to
11 relieve him of his stress.

12 Do you know what stress I was referring to?

13 A. I don't.

14 Q. Were you in the May meeting with my father,
15 May 10, 2012?

16 A. I was -- are you talking about on the
17 telephone call?

18 Q. Correct.

19 A. I wasn't together with him.

20 Q. Okay. Were you together with anybody on that
21 call?

22 A. No. I was on -- in my -- my office phone.

23 Q. Okay. And at that meeting, did Si state that
24 he was having this meeting to end disputes among certain
25 parties and himself?

1 A. I don't recall.

2 Q. Were there any disputes you were aware of?

3 A. The only thing that he ever brought to my
4 attention was the letter that Pam had sent him.

5 Q. And what did Pam's letter state, basically?

6 A. I can't remember it. I mean, it was the
7 letter that he showed me in February of 2012. But the
8 general gist of that letter was that she was unhappy
9 about not being part of their estates.

10 Q. Just her or her and her children?

11 A. She may have spoke to her children.

12 Q. Was there anybody else who was left out of the
13 wills and trusts?

14 A. That was causing him stress?

15 Q. No. Just anybody at this point that was left
16 out, other than Pam.

17 A. Yes. Ted.

18 Q. And are you aware of anything Ted and Pam were
19 doing to force upon Si changes?

20 A. Not to my knowledge, other than the letter
21 that Pam had sent to him just expressing her
22 dissatisfaction.

23 Q. You said you talked to her attorney?

24 A. I talked to her attorney.

25 Q. And you told her attorney, while Si was

1 living, that she had been cut out of the estates and
2 trusts with her brother Ted?

3 A. I don't recall the conversation with the
4 attorney, but, ultimately, Si gave me authorization to
5 send documents to the attorney. So we may have had a
6 conversation about it.

7 Q. So you're stating that Si told you to -- he
8 authorized you to tell his daughter that she had been
9 cut out of the estates and trusts?

10 A. He authorized me to send documents to the
11 attorney.

12 Q. Did you send those documents to the attorney?

13 A. I believe we did, yes.

14 Q. Okay. Was Ted and his lineal descendants
15 disinherited?

16 A. They were, under the original documents.

17 Q. Well, under Shirley's document that's
18 currently theirs, Ted considered predeceased for all
19 purposes of disposition according to the language in the
20 document you drafted?

21 A. To the extent that assets passed to him under
22 the trust.

23 Q. Well, the document says, for all purposes of
24 disposition, Ted Bernstein is considered predeceased,
25 correct?

1 A. You'll have to state the question again.

2 Q. Does the document you drafted say that Ted
3 Bernstein is both considered predeceased under the
4 beneficiary definition with his lineal descendants and
5 considered predeceased for all purposes of dispositions
6 of the trust?

7 MR. ROSE: Objection. Best evidence. The
8 document's in evidence.

9 THE COURT: Sustained.

10 MR. BERNSTEIN: I'll have him read it.

11 THE COURT: Well, I mean, I can read it. It's
12 in evidence. So when it comes time, just point me
13 to the part that you want me to read, and I'll read
14 it. But I don't need to have the witness read it
15 to me. That's of no benefit.

16 MR. ROSE: Your Honor, and for the record,
17 those issues are part of the other counts and
18 aren't being tried today.

19 MR. BERNSTEIN: Page 7, Your Honor, of the
20 Shirley trust.

21 THE COURT: What exhibit number is that?

22 MR. BERNSTEIN: You want me to enter it as my
23 exhibit?

24 THE WITNESS: Plaintiff's Exhibit 2, Your
25 Honor.

1 THE COURT: All right. Let me go to page 7 of
2 Plaintiff's 2.

3 MR. BERNSTEIN: Can I enter this one into the
4 record?

5 THE COURT: Is it the same as the one I
6 already have?

7 MR. BERNSTEIN: According to Alan, it's not.

8 THE COURT: According to who?

9 MR. BERNSTEIN: Mr. Rose.

10 THE COURT: All right. Well, if it comes time
11 for you to put any exhibits in on your case, if
12 that's not a duplicate of an exhibit that's already
13 in, you're welcome to put it into evidence. But
14 this is not the time when you put evidence in.
15 This is the time when you're cross-examining the
16 plaintiff's witness.

17 MR. BERNSTEIN: Okay.

18 THE COURT: So on Page 7 of Plaintiff's 2, you
19 can go on with your questioning.

20 BY MR. BERNSTEIN:

21 Q. Are you there and are we on the same page?

22 Yes?

23 A. Yes, I am.

24 Q. Okay. In the definition of -- under E1, do
25 you see where it starts "notwithstanding the foregoing"?

1 A. Yes.

2 Q. Okay. Can you read that?

3 A. "Notwithstanding the foregoing, as I have
4 adequately provided for them during my lifetime, for
5 purposes of the dispositions made under this trust to my
6 children, Ted S. Bernstein and Pamela B. Simon and their
7 respective lineal descendants shall be deemed to have
8 predeceased the survivor of my spouse and me, provided,
9 however, if my children Eliot Bernstein, Jill Iantoni
10 and" --

11 Q. Okay, that's -- you can stop there.

12 Would you consider making distributions a
13 disposition under the trust?

14 A. It would it depend on other factors.

15 Q. What factors?

16 MR. ROSE: Objection. Relevancy.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Is a validity hearing a disposition of the
20 trust?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Sustained.

24 MR. BERNSTEIN: Well, he drafted the document,
25 so I'm trying to get what his meaning was when he

1 put it in. And it's relevant to the hearing today.

2 THE COURT: I ruled it's not relevant.

3 MR. BERNSTEIN: Oh, you did rule that?

4 THE COURT: Do you have another question of
5 the witness? Or we're moving on.

6 MR. BERNSTEIN: Okay.

7 BY MR. BERNSTEIN:

8 Q. So for purposes of disposition, Ted, Pam and
9 her lineal descendants are considered predeceased,
10 correct?

11 MR. ROSE: Objection. Relevancy, cumulative
12 and best evidence.

13 THE COURT: Sustained.

14 The document says what it says.

15 MR. BERNSTEIN: Okay.

16 THE COURT: When you ask a witness if it says
17 what it says, I don't pay any attention to his
18 answer, because I'm reading what it says.

19 MR. BERNSTEIN: Okay.

20 BY MR. BERNSTEIN:

21 Q. Did you produce a fraudulent copy of the
22 Shirley trust agreement?

23 A. No, I did not.

24 Q. So when you sent to Christine Yates this trust
25 agreement with the attached amendment that you've

1 already admitted you fraudulently altered, was that
2 producing a not valid copy of the trust that was
3 distributed to a party?

4 A. We've already talked about the amendment was
5 not a valid amendment.

6 Q. No, I'm asking, did you create a not valid
7 trust of my mother's and distribute it to Christine
8 Yates, my children's attorney?

9 MR. ROSE: Objection. Cumulative. He's
10 covered this.

11 MR. BERNSTEIN: Well, it has to go to the
12 validity, Your Honor, because --

13 THE COURT: The question I'm figuring out is,
14 have we already covered this?

15 MR. BERNSTEIN: We touched on a piece of it.
16 The more important part --

17 THE COURT: Okay. Then I'll let you reask
18 your question to cover something that we've not
19 already covered.

20 MR. BERNSTEIN: Okay. And we covered that
21 the --

22 THE COURT: You don't have to remind me.

23 MR. BERNSTEIN: Oh, okay.

24 THE COURT: Listen, see, this -- look at this.
25 I take notes. I write stuff down. Now, a lot of

1 times, if you see me not writing and I'm doodling,
2 that means you're not scoring any points.

3 MR. BERNSTEIN: You've got to show me --

4 THE COURT: The point is, I should be writing
5 notes. So that means you're not doing any good.

6 MR. BERNSTEIN: Gotcha.

7 THE COURT: So, please, the reason I write it
8 is so we don't have to repeat things.

9 BY MR. BERNSTEIN:

10 Q. Okay. You've already stated that you created
11 a fraudulent amendment.

12 Did you attach it to a Shirley trust document?

13 A. No. We included the amendment with the
14 documents that we transmitted to her.

15 Q. So it was included as part of the Shirley
16 trust document as an amendment, correct?

17 A. It was included as an amendment.

18 Q. To the Shirley trust document.

19 Thereby, you created a fraudulent copy, a not
20 valid copy of the Shirley trust, correct?

21 MR. ROSE: Objection. Argumentative.

22 Cumulative.

23 THE COURT: Overruled.

24 You can answer. Did that create a fraudulent
25 version of the trust?

1 THE WITNESS: It could have, yes, Your Honor.

2 BY MR. BERNSTEIN:

3 Q. Can you explain why it couldn't have?

4 A. Because Si ultimately exercised his power of
5 appointment, which was broader than the definitional
6 provision in the document.

7 Q. That's not my question. I'll just say it was
8 asked and not answered.

9 Okay. So there are not validly -- not valid
10 Shirley trust agreements in circulation, correct?

11 A. That's not true.

12 Q. Well, the Shirley trust agreement you said
13 sent to Christine Yates you've just stated was invalidly
14 produced.

15 A. To Christine Yates.

16 Q. Yeah, okay. So I said "in circulation."

17 Is Christine Yates out of circulation?

18 A. I don't know what Christine Yates did with the
19 documents.

20 Q. Well, I got a copy, so they're even more in
21 circulation.

22 So my point being, you sent from your law firm
23 fraudulent -- a non-valid copy of the document --

24 A. Which document?

25 Q. -- the Shirley trust and her amendment to

1 Christine Yates, right?

2 MR. ROSE: Objection. Cumulative.

3 THE COURT: Sustained.

4 MR. BERNSTEIN: Okay. We'll move on from
5 that.

6 BY MR. BERNSTEIN:

7 Q. Would you know about when you did that
8 fraudulent alteration of the document?

9 A. January 2013.

10 Q. And you were a fiduciary -- or you were
11 counsel to the alleged fiduciary, Ted Bernstein, of the
12 Shirley Bernstein trust, correct?

13 A. Yes, we were.

14 Q. And you were counsel to Ted Bernstein as the
15 alleged personal representative of Shirley's estate?

16 A. Yes, we were.

17 Q. And as Ted's counsel in the Shirley trust, can
18 you describe what the not valid trust agreement that was
19 sent to Ms. Yates did to alter the beneficiaries of the
20 document?

21 MR. ROSE: Objection. Cumulative.

22 THE COURT: Overruled.

23 What alterations did that make to the
24 beneficiaries?

25 THE WITNESS: It didn't make any alterations

1 to the beneficiaries. The document's not a valid
2 document and so it couldn't have made any changes
3 to the estate planning.

4 BY MR. BERNSTEIN:

5 Q. Okay. But what did it intend to do?

6 MR. BERNSTEIN: Sorry. Excuse me, Your Honor.

7 What did you say?

8 THE COURT: Next question.

9 BY MR. BERNSTEIN:

10 Q. Okay. What did it intend to do?

11 A. I answered that question earlier.

12 THE COURT: I can't let the witness object to
13 questions. That won't work.

14 THE WITNESS: I'm sorry, Your Honor. Earlier
15 you asked me the question, and I responded to you
16 that it was to carry out your father's intent and
17 the agreement that you all had made prior to his
18 death, on that telephone call, and to have a
19 document that would provide, perhaps, clarity to a
20 vague misinterpretation of your mother's document.

21 BY MR. BERNSTEIN:

22 Q. So instead of going to the court, you just
23 frauded a document to an attorney, who's representing
24 minor children in this case -- produce a fraudulent copy
25 of the trust document, making us have total trouble

1 understanding what's real and not, especially with your
2 firm's history of fraudulent and forged documents
3 submitted to the court in this case.

4 THE COURT: Okay. Thanks. You're just
5 ranting. Ranting is not allowed.

6 MR. BERNSTEIN: Sorry.

7 THE COURT: If you'd like to ask a question,
8 I'll let you do that. If I have to call you on
9 this too many more times, I'm going to assume that
10 you're done questioning the witness.

11 MR. BERNSTEIN: Okay.

12 BY MR. BERNSTEIN:

13 Q. When did you first meet my parents?

14 A. 2007.

15 Q. And how did you meet them?

16 A. I met them through someone that made a
17 referral to them to our office.

18 Q. You didn't know Ted Bernstein prior to meeting
19 Si?

20 A. I don't recall who we met first. I'm not
21 sure.

22 Q. What firm were you with at the time?

23 A. Tescher, Gutter, Chaves, Josepher, Rubin and
24 Ruffin and Forman.

25 Q. And how long were you with them?

1 A. Five-plus years.

2 Q. And where were you before that?

3 A. I was in school.

4 Q. Okay. Did you work at Sony Digital ever?

5 A. I did.

6 Q. You did. And when was that, before school or
7 after?

8 A. That was from 1994 to '96.

9 Q. So after school?

10 A. After college.

11 Q. Okay. So that was -- you just forgot about
12 that one in your history.

13 Is there any other parts of your biography I'm
14 missing?

15 MR. ROSE: Objection. Argumentative.

16 THE COURT: Sustained.

17 BY MR. BERNSTEIN:

18 Q. Can you repeat, since I'm -- there was a
19 little clarification error there. Your history, you
20 started --

21 THE COURT: That's not necessary to repeat the
22 history. Do you have a new question?

23 MR. BERNSTEIN: Well, I'm trying to get the
24 history.

25 THE COURT: I don't want him to repeat what

1 he's already said. That moves the case backwards.

2 I want to go forward. You're cavitating.

3 MR. BERNSTEIN: Okay.

4 BY MR. BERNSTEIN:

5 Q. Did the altered trust document sent to
6 Christine Yates attempt to convince Yates and others she
7 sent that document to that Ted and Pam's lineal
8 descendants were actually inside the document?

9 A. Say the question again.

10 Q. Well, we read the section where they're
11 considered predeceased, Ted and Pam and their lineal
12 descendants.

13 When you altered that amendment that you said
14 you were just doing Si's wishes postmortem by altering a
15 document, my question is, did you put language in there
16 that would have made Ted and Pam's lineal descendants
17 now beneficiaries of Shirley's trust?

18 MR. ROSE: Objection. I think it's
19 cumulative. We've covered this.

20 THE COURT: Sustained.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Can the beneficiary of Shirley's trust be Ted,
24 Pam or their lineal descendants?

25 A. If the assets of her trust were to pass under

1 the trust, no --

2 Q. Okay.

3 A. -- under the trust.

4 Q. So in the trust language of the Shirley trust
5 document, Ted's lineal descendants and Pam's lineal
6 descendants can get no dispositions, distributions,
7 whatever you want to call it?

8 A. You have to ask the question in a different
9 way, because I answered the question. I said, if it
10 passes under the trust, that they would not inherent.
11 If.

12 Q. Okay. When Shirley died, was her trust
13 irrevocable at that point?

14 A. It was.

15 Q. Who were the beneficiaries?

16 A. Simon Bernstein.

17 Q. And who were the beneficiaries -- well, Simon
18 Bernstein wasn't a beneficiary. He was a trustee.

19 A. No, he became the beneficiary of her trust
20 when she died. He was the sole beneficiary of her trust
21 when she died.

22 Q. Okay. And then who would it go to when he
23 died?

24 MR. ROSE: Objection. Cumulative.

25 THE COURT: Sustained.

1 BY MR. BERNSTEIN:

2 Q. Okay. When Simon died, who would the benefits
3 of Shirley's trust go to?

4 MR. ROSE: Objection. Cumulative.

5 THE COURT: Are you asking him to tell you
6 what would happen if the mother died first, then
7 the father died second, and we have the trust
8 documents and the wills that are in place so far
9 that have been testified to at the trial?

10 MR. BERNSTEIN: Correct.

11 THE COURT: I already know all that stuff.

12 MR. BERNSTEIN: Well --

13 THE COURT: So what is the new question you
14 want to ask that's not cumulative?

15 MR. BERNSTEIN: Okay. Well, I'm trying to get
16 to a very significant point there.

17 THE COURT: Get there. Just go there and see
18 what happens.

19 MR. BERNSTEIN: I just have to learn to ask
20 these questions a little more like a lawyer.

21 THE COURT: Yes.

22 MR. BERNSTEIN: So I have to rethink how to
23 ask that.

24 BY MR. BERNSTEIN:

25 Q. Do you recall talking to Detective Ryan

1 Miller?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. Can you tell me all the roles you had in these
6 estates and trusts, and your partner, Don Tescher?

7 A. We were the attorneys to your parents. Upon
8 your dad's death, we became counsel to his estate and
9 served as co-PRs and co-trustees under his documents.

10 Q. Any other roles?

11 A. Served as counsel for -- we served as counsel
12 for Ted as fiduciary under your mother's documents.

13 Q. And who served as your counsel as trustee
14 PR -- co-trustee, co-PR?

15 A. Mark Manceri.

16 Q. Mark Manceri submitted that he was your
17 attorney?

18 A. I believe so, yes.

19 Q. Did you take a retainer out with him?

20 MR. ROSE: Objection. Relevance.

21 THE WITNESS: I'm sorry.

22 THE COURT: What's the relevance of the
23 retainer question?

24 THE WITNESS: I'm sorry. I take that back.

25 Mark Manceri was not counsel to us with respect to

1 the estate, except on a very specific matter.

2 THE COURT: The question that was objected to
3 was, did you take out a retainer? What's the
4 relevance of that?

5 MR. BERNSTEIN: Well, I'm trying to figure out
6 if he was properly representing before the court
7 these documents, and to his credibility, meaning
8 his --

9 THE COURT: I'll sustain the objection.

10 MR. BERNSTEIN: Okay.

11 BY MR. BERNSTEIN:

12 Q. And a question about the court. How long
13 before you notified the court as a personal
14 representative fiduciary that you had produced a
15 fraudulent trust of Shirley's?

16 A. To whom? I don't know that we ever
17 represented the document to the court, and I don't know
18 that anyone ever came to the court and said that we did.

19 Q. Well, I did in a petition I filed and served
20 on you --

21 MR. ROSE: Objection.

22 BY MR. BERNSTEIN:

23 Q. -- of January -- excuse me -- petition that I
24 served on you exposing a fraud of what happened with
25 Christine Yates after you admitted that to the police.

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Okay. How many times have you spoken with
5 Alan Rose in the last three months?

6 A. Twice.

7 Q. Did you prepare for this hearing in any way
8 with Alan Rose?

9 A. I did.

10 Q. Okay. Was that the two times you spoke to
11 him?

12 A. Yes.

13 Q. Do you see any other of the parties that would
14 be necessary to validate these trust documents in the
15 court today?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. And you gave testimony to the total net worth
20 of Simon today, when you were asked by Mr. Rose; is that
21 correct?

22 A. Yes.

23 Q. How long did you serve as the co-trustee and
24 co-personal representative?

25 A. Of your father's estate? Since the date of

1 his death.

2 Q. And his trust?

3 A. Same.

4 Q. Okay. Did you produce an accounting to
5 support those claims you made today?

6 MR. ROSE: Objection. Relevancy.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Well, can I argue that or --

9 THE COURT: No.

10 MR. BERNSTEIN: Not even close. Does that
11 mean I have to ask it a different way?

12 THE COURT: Well, I can't answer questions.
13 I'm not allowed to give anybody legal advice.

14 MR. BERNSTEIN: Okay. That was procedural, I
15 thought. But okay.

16 THE COURT: Well, that's legal advice.
17 Procedure is a legal issue.

18 BY MR. BERNSTEIN:

19 Q. As a fiduciary of the estate of Simon and the
20 trust of Simon, did your law firm produce a accounting?

21 MR. ROSE: Objection. Relevance.

22 MR. BERNSTEIN: Well, it's relevant to, if
23 he's a fiduciary, his conduct. I mean, there's --

24 THE COURT: Here's the way I handle
25 objections --

1 MR. BERNSTEIN: Okay.

2 THE COURT: -- somebody asks a question, and
3 somebody in the courtroom says objection, and then
4 I have them state the legal objection and stop.
5 The other side doesn't say anything, unless I say,
6 Is there any argument one side or the other?
7 Because usually I can figure this stuff out without
8 having to waste time with arguments.

9 I didn't ask for any argument, right? Okay.
10 Sustained. Next question.

11 BY MR. BERNSTEIN:

12 Q. Mr. Rose asked you about Shirley's Bentley.

13 Are you aware -- you became aware of Shirley's
14 Bentley, correct?

15 A. Yes.

16 Q. When you became aware of Shirley's Bentley,
17 did you put in an amended inventory to account for it?

18 THE COURT: What's this going to help me
19 decide on the validity of the wills or trusts?

20 MR. BERNSTEIN: I'm just responding to the
21 statements that were brought up.

22 THE COURT: I wish you would have objected to
23 the relevancy then, but you didn't.

24 MR. BERNSTEIN: I did.

25 THE COURT: I don't think so.

1 MR. BERNSTEIN: No?

2 THE COURT: I'm a car guy, so I pay attention
3 if somebody's asking questions about Bentleys just
4 because it's interesting.

5 MR. BERNSTEIN: Well, it's so important, Your
6 Honor, because --

7 THE COURT: No, it's not. Right now what is
8 tied is, are the wills and trusts bound?

9 MR. BERNSTEIN: We have to question his
10 competency.

11 THE COURT: And so what's in the estate or
12 what's in the trust is not of any interest to me
13 right now. So if that Bentley should have been in
14 the estate or should not have been in the estate,
15 it should have been accounted for, not accounted
16 for, I'm not going to figure out today. But I want
17 to get all the evidence I possibly can to see
18 whether these wills and trusts that are in front of
19 me are valid or not valid. And I'm hoping that
20 you'll ask some questions that'll help me figure
21 that out.

22 MR. BERNSTEIN: Are those originals that you
23 have?

24 THE COURT: See, I'm not the witness. I'm the
25 judge. So I'm not sworn in and I have no knowledge

1 of the facts of this case, other than what the
2 witnesses tell me.

3 MR. BERNSTEIN: I'm winding down. I'll check
4 my list.

5 THE COURT: All right.

6 BY MR. BERNSTEIN:

7 Q. Are you familiar with a document the Bernstein
8 Family Realty LLC agreement?

9 A. Yes, I am.

10 Q. Did you draft that document?

11 A. Yes, I did.

12 Q. Was it part of Simon's estate planning?

13 A. It was part of his estate planning -- well,
14 yes --

15 Q. And what was --

16 A. -- in a roundabout way.

17 Q. What was it designed to do?

18 A. It was designed to hold title to the home that
19 you and your family live in.

20 Q. Oh, okay. And so it was -- who's the owners
21 of that?

22 A. The three kids -- your three kids, Josh,
23 Daniel -- your three kids' trusts that your father
24 created -- and Jake -- that he created in -- I believe
25 he created those trusts in 2006.

1 Q. And the prior testimony was, there were no
2 special documents under Simon's estate plan for my
3 family; is that correct?

4 A. Right. None that we prepared. Those were not
5 documents that we prepared.

6 Q. Okay. I think he asked you if you knew of
7 any.

8 So you knew of these, correct?

9 A. You're making me recall them. Yes.

10 Q. Oh, okay. Because you answered pretty
11 affirmatively no before, that you weren't aware of any
12 special --

13 THE COURT: Do you have any questions for the
14 witness?

15 MR. BERNSTEIN: Okay. I get it.

16 BY MR. BERNSTEIN:

17 Q. You referenced an insurance policy.

18 MR. BERNSTEIN: Can I -- well, I can't ask him
19 anything.

20 BY MR. BERNSTEIN:

21 Q. You referenced an insurance policy earlier,
22 life insurance policy, that you said you never saw; is
23 that correct?

24 A. Yes.

25 Q. And was that part of the estate plans?

1 A. We never did any planning with that. That was
2 an insurance policy that your father had taken out
3 30 years before. He had created a trust in 1995 for
4 that. That was not a part of any of the planning that
5 we did for him.

6 Q. Did you file a death benefit claim on behalf
7 of that policy?

8 MR. ROSE: Objection. Relevancy.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Is Christine Yates, who you sent the
12 fraudulently altered Shirley trust document that's not
13 valid, a layman?

14 MR. ROSE: Objection. Argumentative.

15 MR. BERNSTEIN: Excuse me.

16 BY MR. BERNSTEIN:

17 Q. Is she an attorney at law?

18 THE COURT: Now you're asking a different
19 question.

20 MR. BERNSTEIN: Okay.

21 THE COURT: Thanks.

22 BY MR. BERNSTEIN:

23 Q. Is she a layman, as you described prior?

24 A. She's an attorney.

25 Q. Okay. So you were sending that document that

1 you said you altered to make a layman understand the
2 language in the trust better?

3 MR. ROSE: Objection. Cumulative.

4 THE COURT: Let me have you finish your
5 questioning.

6 BY MR. BERNSTEIN:

7 Q. But you sent it to Christine Yates, an
8 attorney, who's not a layman?

9 A. We did.

10 Q. Okay. So it could be that you sent that
11 document to an attorney to commit a fraud upon her
12 clients, my children, minor children, correct?

13 A. The intent was not to commit a fraud.

14 Q. Okay.

15 A. Again, the intent was to carry out your dad's
16 wishes.

17 Q. By fraudulently altering documents?

18 MR. ROSE: Objection. Argumentative.

19 THE COURT: Sustained.

20 If you ask one more argumentative question, I
21 will stop you from asking the other things, because
22 I'll figure that you're done. Is that clear?

23 MR. BERNSTEIN: Yes.

24 THE COURT: I'm done warning you. I think
25 that's just too much to have to keep saying over

1 and over again.

2 BY MR. BERNSTEIN:

3 Q. When Shirley died, were her wishes upheld?

4 A. Your dad was the sole survivor of her
5 estate -- he was the sole beneficiary of her estate and
6 her trust.

7 Q. So her wishes of her trusts when Simon died
8 were to make who the beneficiaries?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Who did Shirley make -- are you familiar with
13 the Eliot Bernstein Family Trust?

14 A. I am.

15 Q. And is that trust under the Shirley trust?

16 A. No, it's not.

17 Q. It's a separate trust?

18 A. It is.

19 Q. Is it mentioned in the Shirley trust?

20 A. It may be.

21 Q. As what?

22 A. As a receptacle for Shirley's estate.

23 Q. Her trust?

24 A. A potential receptacle for Shirley's trust.

25 Q. So there were three, the Eliot Bernstein

1 Family Trust, Lisa Friedstein and Jill Iantoni Family
2 Trust, that are mentioned as receptacles. I would
3 assume that's the word, beneficiary --

4 MR. ROSE: Objection.

5 BY MR. BERNSTEIN:

6 Q. -- of the Shirley trust, correct?

7 MR. ROSE: Objection. Cumulative.

8 THE COURT: Sustained.

9 BY MR. BERNSTEIN:

10 Q. Okay. On Simon's medical state eight weeks
11 before he died, when these documents of the Simon trust
12 are alleged by you to have been signed, are you aware of
13 any conditions of Simon's at that time medically?

14 A. I was not.

15 Q. Were you aware of any medicines he was on?

16 A. I was not.

17 Q. Were you aware he was seeing a psychiatrist?

18 A. I was not.

19 Q. Were you aware that he was going for a brain
20 scan?

21 A. I was not.

22 Q. Were you aware that he was brought in to
23 multiple doctors during that time for brain problems;
24 that they ended up doing a brain biopsy at Delray
25 Medical right around that time that he's said to sign

1 these documents?

2 A. He did not make us aware of any medical issues
3 that he had.

4 Q. Okay. Did you ask him at the time you were
5 signing those amended documents if he was under any
6 medical stress?

7 A. No, I did not.

8 Q. Okay.

9 A. He --

10 MR. BERNSTEIN: Can I ask him to read that?

11 BY MR. BERNSTEIN:

12 Q. Can you look at that document and --

13 MR. BERNSTEIN: Judge, would you like a look
14 at this?

15 THE COURT: I don't look at anything that's
16 not an exhibit.

17 MR. BERNSTEIN: I'm exhibiting it to him.

18 THE COURT: Okay. Well, that's fine, but I
19 want you to go ahead and ask your question. I
20 don't look at things that aren't exhibits in
21 evidence --

22 MR. BERNSTEIN: Okay.

23 THE COURT: -- unless I have to mark them.

24 But no, I don't have a curiosity to look at pieces
25 of paper.

1 MR. BERNSTEIN: Should I exhibit it as
2 evidence -- can I exhibit it as --

3 THE COURT: If it comes into evidence, I'll
4 look at it.

5 MR. BERNSTEIN: Okay. Can I submit it as
6 evidence?

7 THE COURT: Well, have you asked any questions
8 to establish what it is?

9 BY MR. BERNSTEIN:

10 Q. Is this a letter from your law firm -- prior
11 law firm?

12 A. I did not prepare this letter --

13 Q. Okay.

14 A. -- but it appears to be, yes.

15 Q. Prepared by?

16 A. Donald Tescher.

17 MR. BERNSTEIN: Okay. Now can I submit it?

18 THE COURT: So you're offering it as an
19 exhibit --

20 MR. BERNSTEIN: Please.

21 THE COURT: -- as Defendant's 2.

22 Is there any objection?

23 MR. ROSE: No objection.

24 THE COURT: All right. I'll take a look at
25 it. And that'll be in evidence as Defendant's 2.

1 Thank you.

2 (Defendant's Exhibit No. 2 was received into
3 evidence.)

4 BY MR. BERNSTEIN:

5 Q. Can you just read into the record
6 paragraph 2 --

7 THE COURT: Well, I'm reading it. The
8 document is in the record.

9 MR. BERNSTEIN: Oh, okay.

10 THE COURT: I'm reading paragraph 2 even as we
11 speak, so I don't need the witness to read it for
12 me. But if you want to ask him a question, you can
13 go ahead with that.

14 BY MR. BERNSTEIN:

15 Q. Okay. That letter states that Si's power of
16 appointment for Simon could not be used in favor of Pam,
17 Ted and their respective children; is that correct?

18 A. Yes. Don appears to have written that.

19 Q. Did you get a copy of this letter?

20 A. I don't recall getting a copy of it, but
21 doesn't mean that I didn't.

22 Q. But you are partners in that firm?

23 A. Yes, we were partners in that firm.

24 Q. Now, that -- this document --

25 MR. ROSE: Your Honor, can I just -- I don't

1 want to go out of order, but this is only relevant
2 if the documents are valid. And if he's -- the
3 whole point is the documents are valid. And he
4 wants to argue the second part, of what they mean,
5 then we should not have wasted a whole day arguing
6 over the validity of these five documents.

7 THE COURT: Well, waste of time is what I do
8 for a living sometimes. Saying we shouldn't be
9 here doesn't help me decide anything.

10 I thought I was supposed to decide the
11 validity of the five documents that have been
12 pointed out; some of them might be valid and some
13 of them might be invalid. And I'm struggling to
14 decide what's relevant or not relevant based upon
15 the possibility that one of them might be invalid
16 or one of them might not. And so I'm letting in a
17 little bit more stuff than I normally think I
18 would.

19 MR. ROSE: I'm concerned we're arguing the
20 second -- the second part of this trial is going to
21 be to determine what the documents mean and what
22 Simon's power of attorney could or couldn't do.
23 And this document goes to trial two and not trial
24 one, although I didn't object to its admissibility.

25 THE COURT: Well, since it's in evidence,

1 we'll leave it there and see what happens next.

2 Do you have any other questions of the
3 witness?

4 MR. BERNSTEIN: Yeah.

5 BY MR. BERNSTEIN:

6 Q. It says that the document that you
7 fraudulently altered creating the invalid copy of the
8 Shirley trust had some kind of paragraph 2 that was
9 missing from the original document --

10 MR. ROSE: Objection. Argumentative.

11 BY MR. BERNSTEIN:

12 Q. -- from my understanding.

13 THE COURT: You may finish your question. And
14 make sure it's a question and not an argument.
15 Because you know what happens if this is an
16 argument.

17 MR. BERNSTEIN: I'm not arguing. I'm just
18 asking --

19 THE COURT: I want you to ask your question.

20 BY MR. BERNSTEIN:

21 Q. It says here that there was a blank spot that
22 you -- a Paragraph No. 2 which modified the definitional
23 language by deleting words.

24 According to this document, the power of
25 appointment by Simon could not alter the Shirley trust

1 agreement, correct?

2 A. Don seems to be suggesting that in the second
3 paragraph. I don't necessarily believe that that's the
4 case.

5 Q. Did you review this document with Don?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: The question is, Did you go over
8 this document with Don?

9 MR. BERNSTEIN: Correct.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: No.

13 BY MR. BERNSTEIN:

14 Q. So he's -- Don, in this letter, is describing
15 your actions, correct?

16 A. Yes.

17 Q. Okay. Did you write a letter to anybody
18 describing your actions?

19 A. I did not.

20 Q. You did not.

21 And what have you done to correct the damages
22 caused by that to my family?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25 MR. BERNSTEIN: Okay.

1 BY MR. BERNSTEIN:

2 Q. And are you aware of an autopsy that was done
3 on my father the day -- or ordered the day he died?

4 MR. ROSE: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. BERNSTEIN:

7 Q. Are you aware -- well, are you aware of a
8 heavy metal poison test that was done by the Palm Beach
9 County coroner?

10 MR. ROSE: Objection. Relevance.

11 THE COURT: Sustained.

12 MR. BERNSTEIN: Well, it's --

13 THE COURT: Next question.

14 MR. BERNSTEIN: I'm trying to figure that out.

15 Your Honor, is -- I can't ask you that question.

16 BY MR. BERNSTEIN:

17 Q. Competency. Based on everything you know
18 about Simon, when he signed those documents, he was
19 competent?

20 A. To my knowledge, he was of sound mind and
21 body.

22 Q. Now, are you a medical expert?

23 A. I'm not.

24 Q. Are you aware of any other fraudulent activity
25 that took place in anything in the estate and trusts of

1 Simon Bernstein by yourself or your employees?

2 A. Are you referring back to the closing of your
3 mother's estate?

4 Q. I'm referring to any other --

5 A. -- we've talked about.

6 Q. So can you list those and then just say that's
7 all that you're aware of?

8 MR. ROSE: Objection. Cumulative.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Other than the fraud that you've admitted to
12 in the documents of Shirley, the Moran forged and
13 fraudulent waivers, the April 9th waiver that you and Si
14 signed stating he had all the waivers when he couldn't
15 have, are there any other frauds that you're aware of
16 that took place with these estate and trust documents?

17 A. Not to my knowledge.

18 Q. When you were first interviewed by the Palm
19 Beach County Sheriff with Kimberly Moran, did you notify
20 them at that first interview that you had fraudulently
21 altered a document?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. When did you notify the sheriff that you

1 fraudulently altered a document?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. You have these exhibits. This will says
6 "conformed copy" on Exhibit 1 of their exhibits; is that
7 correct?

8 A. Yes, it does.

9 Q. Does a conformed copy have to have the clerk
10 of the court's signature on it?

11 A. Conformed copy would not be sent to the clerk
12 of the courts.

13 Q. Conformed copy -- okay.

14 Is that your signature on the document? This
15 is Exhibit 2, Shirley trust agreement, of the
16 plaintiff's exhibit book, 2, page 27.

17 A. Yes, it appears to be.

18 Q. It appears to be?

19 A. Yes.

20 Q. All right. And is that Traci Kratish's
21 signature?

22 A. She was there. I can't speak to her
23 signature.

24 Q. Did you witness her sign it?

25 A. I did.

1 Q. Okay. Is that my mom's signature on page 28?

2 A. Yes, it is.

3 Q. On this first amendment to Shirley's trust --

4 MR. BERNSTEIN: Exhibit 3, Your Honor, page 1
5 of 3, I guess. It's the first page in that
6 exhibit.

7 BY MR. BERNSTEIN:

8 Q. Is that document -- do you recall that
9 document?

10 A. Yes.

11 Q. Okay. And you recall the day it's signed and
12 notarized, allegedly?

13 A. November 18th, 2008.

14 Q. On the front page of that document, what day
15 is the document dated?

16 A. It's not dated.

17 Q. Is that typical and customary in your office?

18 A. Sometimes clients forget to put the date at
19 the top.

20 Q. You forget?

21 A. I said, sometimes clients forget to put the
22 date at the top.

23 Q. Well, did you check the document before making
24 it a part of a will and trust?

25 A. It was notarized as a self-proving document.

1 Q. Are you aware that Kimberly Moran's
2 notarization of the Simon trust has been found by the
3 Governor Rick Scott's notary public division to be
4 deficient?

5 MR. ROSE: Objection. Hearsay.

6 THE COURT: Sustained.

7 BY MR. BERNSTEIN:

8 Q. Are you aware of Kimberly Moran of your office
9 being contacted by the governor's office in relation to
10 these wills and trusts?

11 MR. ROSE: Objection. Hearsay.

12 THE COURT: Sustained.

13 What do I care if he's aware of that or not?
14 How does that help me decide the validity of these
15 documents?

16 MR. BERNSTEIN: Well, the governor's already
17 made a claim that --

18 THE COURT: But you're asking the witness if
19 he's aware of. Are you aware the sky is blue right
20 now? It doesn't matter to me if he's aware of it
21 or not. Are you aware Rick Scott has started an
22 investigation of a moon landing? It doesn't matter
23 to me if he knows that or not. You asked him are
24 you aware of somebody from Rick Scott's office
25 doing something. It doesn't matter to me if he's

1 aware of that or not. I've got to figure out the
2 validity of these documents, so I need to know
3 facts about that, please. Any other questions of
4 the witness on that?

5 MR. BERNSTEIN: Yes.

6 BY MR. BERNSTEIN:

7 Q. Is that my father's signature?

8 A. I'm not an expert on your father's signature.
9 But if it's on his will, at the bottom of his will, that
10 must have been a copy that was obtained from the clerk
11 of the courts, because that will was filed, and we would
12 have conformed copies in our file, which would not have
13 his signature at the bottom. Apparently, it is.

14 Q. But it does say on the document that the
15 original will's in your safe, correct?

16 A. For your mother's document, it showed that.

17 Q. Oh, for my father's -- where are the originals
18 of my father's?

19 A. Your father's original will was deposited in
20 the court. As was your mother's.

21 Q. How many copies of it were there that were
22 original?

23 A. Only one original. I think Mr. Rose had
24 stated on the record that he requested a copy from the
25 clerk of the court of your father's original will, to

1 make a copy of it.

2 Q. Certified?

3 A. I'm not sure if he said it was certified or
4 not.

5 Q. Is that your signature on my father's will?

6 MR. BERNSTEIN: This is Exhibit 4, Your Honor,
7 Page 7.

8 THE WITNESS: Yes, it is.

9 BY MR. BERNSTEIN:

10 Q. Okay. Is that my father's signature?

11 A. Appears to be.

12 Q. Whose signature is that?

13 A. That's my signature.

14 Q. Oh, okay. So the only two witnesses you see
15 on this document are you and Kimberly Moran; is that
16 correct?

17 A. On that page.

18 Q. And both you and Kimberly Moran have had
19 misconduct in these cases?

20 MR. ROSE: Objection. Relevance.

21 THE COURT: Overruled. But it's cumulative.

22 MR. ROSE: It's cumulative.

23 THE COURT: How many times do I need to know
24 this?

25 MR. BERNSTEIN: What does that mean exactly,

1 cumulative? I don't get that. I'm sorry.

2 THE COURT: Let's say you hit me over the head
3 with a two-by-four. That's one time. If you do it
4 twice, that's cumulative. Cumulative's not
5 allowed.

6 MR. BERNSTEIN: That's an objection, is that
7 I've asked it --

8 THE COURT: Yes.

9 MR. BERNSTEIN: -- and it was answered? Is
10 that what it's kind of saying?

11 THE COURT: Yes, asked and answered. That's
12 another way of saying it.

13 MR. BERNSTEIN: Now I got it.

14 THE COURT: Asked and answered is a similar
15 way to say it.

16 MR. BERNSTEIN: Okay. Sorry.

17 BY MR. BERNSTEIN:

18 Q. Is that my father's signature, to the best of
19 your knowledge?

20 A. Appears to be, yes.

21 Q. And is that your signature?

22 A. Yes, it is.

23 Q. And here, did Kimberly Moran properly notarize
24 this document?

25 A. Kimberly did not notarize the document.

1 Q. Or Lindsay Baxley, did she check one -- either
2 the person was personally known or produced
3 identification?

4 A. No. This is what Mr. Rose had gone over
5 earlier.

6 Q. No, those, I believe, are in other documents
7 we'll get to.

8 So this notarization, as far as you can tell,
9 is incomplete?

10 MR. ROSE: Objection. Are we on Exhibit 2?

11 MR. BERNSTEIN: No.

12 THE COURT: We're on Exhibit 4, as far as I
13 recall.

14 MR. BERNSTEIN: He does not miss a thing.

15 Your Honor, page 8.

16 THE WITNESS: This is Si's documents.

17 MR. ROSE: Got it.

18 BY MR. BERNSTEIN:

19 Q. Okay. So on Simon's trust, weeks before he
20 dies, the notarization's improper?

21 A. This was the same document we spoke about
22 before. Yes, she did not circle "known to me,"
23 although...

24 Q. So she didn't know you or Simon?

25 A. No, she knew all of us. She just neglected to

1 circle "known to me."

2 Q. And that's one of the three functions of a
3 notary, to the best of your knowledge, to determine the
4 person is in the presence that day by some form of I
5 either know you or you gave me a license; is that
6 correct?

7 A. Yes.

8 Q. So your firm -- have you done anything since
9 knowing this document's improperly notarized to correct
10 it with the courts?

11 MR. ROSE: Objection. It misstates facts. He
12 didn't say it was improperly notarized.

13 THE COURT: Just state the objection, please.

14 MR. ROSE: Well, calls for a legal conclusion.

15 THE COURT: Sustained.

16 MR. MORRISSEY: Another objection. It
17 misstates the law.

18 THE COURT: Sustained.

19 BY MR. BERNSTEIN:

20 Q. Is that Lindsay -- oh, you can't answer that.

21 So, to the best of your ability, regarding
22 your signature, Kimberly or Lindsay Baxley has failed to
23 state that you either were known to her or produced
24 identification?

25 MR. ROSE: Objection. Cumulative.

1 THE COURT: Sustained.

2 MR. BERNSTEIN: Okay. We'll go on to
3 document 5.

4 BY MR. BERNSTEIN:

5 Q. Is that my father's initials, to the best of
6 your knowledge?

7 A. Appears to be, yes.

8 Q. Do these initials look similar to you, this
9 one on page 2, next to this one on page 3, next to that
10 thing on page 4?

11 A. Initials typically don't look perfect page to
12 page, and they don't necessarily look similar page to
13 page. I have seen clients execute a lot of documents,
14 and by the time they get to, you know, the second and
15 third document, their signatures and their initials do
16 not necessarily look --

17 Q. Look at page 13, for example. I mean, this is
18 almost -- if we go through page by page, tell me if you
19 see any that are even similar. On page -- let's start
20 back at the beginning, if that'll help you.

21 That? Do those look similar to you as you're
22 flipping through those?

23 A. Yeah, they have a lot of the same -- similar
24 ending marks. Your father's ending mark was that line.
25 I mean, it's on every single solitary page.

1 Q. Okay. So your testimony today is those are my
2 father's initials?

3 A. That they were.

4 Q. Okay.

5 A. I was there when he was...

6 Q. And you've looked at all of these, page 19,
7 page 20? Those look similar to what you're saying -- or
8 why don't you just look at them. If you go through them
9 all, they all look different. But okay.

10 A. They all look different, and they all look
11 consistent at the same time.

12 Q. Okay. Is that -- on page 24, is that my
13 father's signature?

14 A. Appears to be.

15 Q. Is that your signature?

16 A. Yes, it is.

17 Q. Okay. Now, this is another trust document
18 that Lindsay Baxley did that's supposed to be notarized,
19 a will and trust, I believe, and the amended and
20 restated.

21 Can you tell that Simon Bernstein was present
22 or produced -- or present that day by the notarization?

23 A. She again failed to mark that he was
24 personally known, but she worked for him.

25 Q. So these dispositive documents are improperly

1 notarized?

2 MR. ROSE: Objection. Cumulative. Legal
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. BERNSTEIN:

6 Q. Okay. And then let's go to the first
7 amendment to Shirley Bernstein's trust. Is this a
8 document prepared --

9 MR. BERNSTEIN: Your Honor, that would be 6.

10 THE COURT: All right.

11 BY MR. BERNSTEIN:

12 Q. Is that a document prepared by your law firm?

13 A. Yes, it is.

14 Q. And do you see where it's, "Now therefore by
15 executing this instrument I hereby amend the trust
16 agreement as following"? And what is it -- what are the
17 numbering sequences there?

18 A. It says, I hereby delete a paragraph of
19 article --

20 Q. What number is that?

21 A. Paragraph B -- it's number 1.

22 Q. Okay. And what's Number 2?

23 MR. ROSE: Objection. Best evidence. It's in
24 evidence. And it's cumulative.

25 THE COURT: Two is in evidence, as is

1 paragraph one and paragraph three. And I've
2 read --

3 MR. BERNSTEIN: Oh, no. But Number 1, Your
4 Honor, take a look real quick. Number 1; there's
5 no Number 2.

6 THE COURT: The objection came on your next
7 question, and that was dealing with paragraph 2,
8 which says it's already in evidence. And it is.

9 MR. BERNSTEIN: No, no, not paragraph 2. Look
10 at down below. Under the "now therefore," there's
11 a Number 1, and I was asking him what Number 2
12 reads.

13 THE COURT: I know you were.

14 MR. BERNSTEIN: And there is no Number 2.

15 THE COURT: You've asked me to look at
16 Exhibit No. 6, right? Plaintiff's Exhibit 6 has,
17 under the therefore clause, a one, a two and a
18 three. Are you asking me to look at a different
19 document?

20 MR. BERNSTEIN: Can I approach?

21 THE COURT: Sure. All right. So that's a
22 different Number 6 than I have. So let's see your
23 Number 6.

24 MR. BERNSTEIN: What do I do on that?

25 THE COURT: That's not my decision.

1 MR. BERNSTEIN: That's his book, not my book,
2 just so you know.

3 THE COURT: Well, that Tab 6 is different than
4 my Tab 6. So there you go.

5 MR. BERNSTEIN: Okay. Well, which -- what do
6 I go off there?

7 THE COURT: I have no --

8 MR. BERNSTEIN: Can I submit that into
9 evidence?

10 THE COURT: I have no preference.

11 MR. BERNSTEIN: Okay. I'd like to submit
12 this, because I'm not sure if the other one is in
13 evidence wrong.

14 THE COURT: All right. Any objection?

15 MR. ROSE: Could I just see the book? Would
16 you mind?

17 THE COURT: Here, I'll show you my book. You
18 can look at that book and see what's going on.

19 And this will be a good time for us to take a
20 short break, and let you all straighten it out. So
21 we'll be back in session in 15 minutes. And then
22 we'll go to the bitter end. Each of you has about
23 60 minutes remaining.

24 MR. BERNSTEIN: Your Honor, when you say
25 "60 minutes remaining," we haven't got through all

1 the witnesses yet.

2 THE COURT: Well, we will have by the end of
3 60 minutes on each side.

4 This trial is over at five o'clock. I told
5 you when we started each of you has half of the
6 time; please use it wisely; use it as you wish.
7 I've tried to encourage both sides to be efficient.
8 When your time is gone, that's the end of the trial
9 for you.

10 MR. BERNSTEIN: Well, the case manager --

11 THE COURT: When their trial is gone --

12 MR. BERNSTEIN: At the case management, they
13 said it would take a day. I argued and said to you
14 it would take days. I mean, they've got
15 10 witnesses. I need to have all the people who
16 witnessed these documents here.

17 THE COURT: Remember when I said a moment ago
18 we're in recess? I was serious. Thanks. We'll go
19 back in session 15 minutes from now.

20 (A break was taken.)

21 THE COURT: We're ready to resume. Are there
22 any further questions for the witness on cross?

23 MR. BERNSTEIN: Okay. We were just working
24 out that 1, 2, 3, Exhibit No. 6, so that we get the
25 record straight.

1 THE COURT: Okay.

2 MR. BERNSTEIN: Shall I get a copy of yours,
3 you get a copy of mine? Or how do you want to do
4 that?

5 MR. ROSE: Your Honor, I tried to work it out.

6 THE COURT: Listen, I don't have any
7 preference as to how we do anything. You all tell
8 me how you've worked it out, and if I agree with
9 it, I'll accept it.

10 MR. ROSE: The copy that's been marked for the
11 witness, the copy in my book and the copy in your
12 book are all identical. I don't know what's in his
13 book, and he wouldn't show me his book on the
14 break.

15 THE COURT: Okay.

16 MR. ROSE: But I'm fine. It's a three-page
17 document. And if he wants to put it in evidence,
18 even though it's not operative, I have no
19 objection.

20 THE COURT: Okay. So are you putting
21 something into evidence?

22 MR. BERNSTEIN: Yeah. The one that I --

23 THE COURT: Have you showed it to the other
24 side yet? You can't put secret documents into
25 evidence, only after they've been seen by everyone.

1 Let's at least show it to the other side so they
2 know the document that's being proffered as an
3 exhibit. If they still have no objection, I'll
4 receive it as Defendant's 3.

5 MR. ROSE: This is in evidence already as
6 Exhibit No. -- as Plaintiff's No. 3.

7 MR. BERNSTEIN: So what's 6? So now I don't
8 even have the right 6 document.

9 MR. ROSE: The 6 that the witness has is three
10 pages. It's the same 6 that's in your book and
11 it's in my book. It's three consecutive pages of
12 the production from Tescher & Spallina law firm.
13 It has the inoperative first amendment as page 1,
14 then it has the operative first amendment as
15 page 2, and the signature page as page 3. It's the
16 same document in everybody's book. That's all I
17 can tell you.

18 THE COURT: Okay.

19 MR. BERNSTEIN: Your Honor, in my book, 3 and
20 6 are the identical documents --

21 THE COURT: Okay.

22 MR. BERNSTEIN: -- so I would need --

23 THE COURT: Are there any other questions of
24 the witness?

25 MR. BERNSTEIN: Well, I was going to ask him

1 questions on this document.

2 THE COURT: All right. Well, then, let's go.

3 MR. BERNSTEIN: Okay. I need a -- I don't
4 have the 6 that everybody else is referring to. My
5 sinks is the same as --

6 THE COURT: There you go. Take whatever you
7 need.

8 MR. BERNSTEIN: Okay. Thank you. I think we
9 missed 6. It's just short on 6.

10 THE COURT: All right. Then here's my Tab 6.

11 MR. BERNSTEIN: Thank you, sir.

12 THE COURT: The idea is to keep moving.

13 MR. BERNSTEIN: Okay. I'll move on. I'm
14 almost done here.

15 BY MR. BERNSTEIN:

16 Q. Okay. So on Exhibit 3, can you list the
17 numbers there?

18 MR. ROSE: Objection. Best evidence.
19 Cumulative.

20 THE COURT: Sustained.

21 You need to refer to which page. That's a
22 multi-page document, and both pages have numbered
23 paragraphs on them.

24 MR. BERNSTEIN: Page 1 of 2.
25

1 BY MR. BERNSTEIN:

2 Q. The Roman Numeral -- or the numerals, can you
3 give the sequence of those numbers?

4 A. One and three. It's skipping two.

5 Q. And this is a document you allege to be part
6 of the Shirley trust that you're claiming is valid?

7 A. That's the amendment that Shirley executed in
8 November of 2008.

9 Q. And would there be a reason why your law firm
10 numbers one, three?

11 MR. ROSE: Objection. Cumulative.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: Human error.

15 BY MR. BERNSTEIN:

16 Q. Okay. But it is an error in the document that
17 you're claiming is valid Shirley trust?

18 A. It's a numbering error.

19 Q. In the document, you're claiming this is a
20 valid amendment, correct?

21 A. Correct.

22 Q. Okay. And then in number 6 from the judge,
23 what's the numbering sequence?

24 A. One, two, three.

25 Q. Okay. So you added in a number two?

1 A. Yes.

2 Q. Okay. How did you go about doing that?

3 A. There was a paragraph two inserted between one
4 and three.

5 Q. Well, the paragraph that's inserted between
6 one and three wouldn't fit there.

7 So what did you do?

8 A. The document was opened up and a paragraph was
9 inserted.

10 Q. Okay. So you increased the spacing on the
11 document, correct, by adding a number three, correct?

12 A. Adding number two, yes.

13 Q. By adding number two, correct.

14 Okay. So you actually had to alter the
15 chronology as it was placed on the document? You didn't
16 just put a number two there in between one and three?
17 You actually went and expanded the document with words
18 that were inserted by you fraudulently, right?

19 MR. ROSE: Objection. Argumentative.

20 Cumulative.

21 THE COURT: Sustained.

22 MR. BERNSTEIN: Okay.

23 MR. ROSE: Your Honor, the witness does have
24 the exhibits in front of him. If Mr. Bernstein
25 could be at the podium.

1 MR. BERNSTEIN: I don't know if he has all the
2 exhibits.

3 THE COURT: Well, do you have the exhibit that
4 I gave you from the Court's?

5 MR. BERNSTEIN: Oh, jeez.

6 THE COURT: Because I'd like to have it back
7 so that that doesn't get lost.

8 MR. BERNSTEIN: Okay. You gave me the one
9 with one, two, three.

10 Can I get a copy of this from the clerk?

11 THE BAILIFF: There is no clerk.

12 THE COURT: Can I have the document back,
13 please? He's not a clerk.

14 MR. BERNSTEIN: Marshall, sheriff, officer,
15 sir. Sorry about that.

16 THE COURT: He does not make copies.

17 MR. BERNSTEIN: Okay.

18 THE COURT: Thanks. Any other questions of
19 the witness? Your time is rapidly disappearing.

20 MR. BERNSTEIN: Just going through that.

21 THE COURT: And I think you said earlier you
22 have no objection to Plaintiff's 6 being received
23 as an exhibit?

24 MR. ROSE: Correct.

25 THE COURT: Okay.

1 MR. ROSE: Thank you.

2 THE COURT: Then it's in evidence as
3 Plaintiff's 6. I'm making it Plaintiff's 6, rather
4 than Defendant's 3, because it's already marked and
5 it's been referred to by that number.

6 (Plaintiff's Exhibit No. 6 was received into
7 evidence.)

8 BY MR. BERNSTEIN:

9 Q. Are these your notes?

10 A. No, they're not. Those are Don's.

11 Q. Do you know the date on that note?

12 A. 3/12/08.

13 Q. Did you take any notes in the meeting?

14 A. Those are my notes there.

15 Q. These are? Oh, so this is a compilation of
16 Don's and your notes?

17 A. Those are my notes, yes.

18 Q. And those were taken on that day?

19 A. Correct.

20 Q. Whose notes are those?

21 A. I just saw those for the first time today. I
22 believe they're your father's notes.

23 Q. How would you know those are my father's
24 notes?

25 A. Mr. Rose introduced that document earlier.

1 Q. Document 12, did it come from your offices?

2 A. I don't know where it came from.

3 Q. Did you Bates stamp this document as part of
4 your documents?

5 A. I don't recall ever seeing that document.

6 Q. And it doesn't have your Bates stamp from your
7 production, right?

8 A. Correct.

9 Q. You were supposed to turn over all your
10 records, correct?

11 MR. ROSE: Objection. He's testified it
12 wasn't in his --

13 THE COURT: What's the objection to the
14 question?

15 MR. ROSE: Cumulative.

16 THE COURT: Sustained.

17 MR. BERNSTEIN: All right. Your Honor, I'm
18 done.

19 THE COURT: All right. Thank you.

20 Is there any redirect?

21 MR. ROSE: Brief, Your Honor.

22 REDIRECT (ROBERT SPALLINA)

23 BY MR. ROSE:

24 Q. Assuming the documents are valid, they'll have
25 to be a later trial to determine the effect of Simon's

1 exercise of his power of appointment?

2 A. Yes.

3 Q. It doesn't have any direct bearing on whether
4 these five documents are valid?

5 A. No.

6 Q. And I take it you don't necessarily agree with
7 Mr. Tescher's view as expressed in his letter of
8 January 14th, 2014?

9 A. Again, I'm seeing that here. Surprised to see
10 that.

11 Q. The original documents, the wills, you
12 retained at all times of Shirley and Simon in your firm?

13 A. Prior to their death, yes.

14 Q. And that's consistent practice for a trust and
15 estate lawyer, to keep it in your will vault or in your
16 safe deposit box?

17 A. Yes. I would say most attorneys do that just
18 because there's only one original of the will, and very
19 often documents can get lost if clients take documents
20 home. So, typically, they're kept in a safe deposit box
21 or a safe or something like that, and left with the
22 attorney.

23 Q. I want to make sure I understand and the Court
24 understands what happened with the waiver forms.

25 While Simon was alive, he signed a petition

1 for discharge; is that correct?

2 A. Correct. April of '08.

3 Q. And --

4 MR. BERNSTEIN: What exhibit? Excuse me.

5 What number are we looking at?

6 MR. ROSE: None -- well, actually, it's in my
7 book. If you want to follow along, it's Tab 28.

8 But it's not in evidence.

9 BY MR. ROSE:

10 Q. And Simon also then filed a waiver of
11 accounting himself?

12 A. Correct.

13 Q. And is it necessary for Simon, even though
14 he's the personal representative, to sign a waiver of
15 accounting because he's a beneficiary?

16 A. I mean, we do it as a matter of course.

17 Q. And the signature of Simon Bernstein on
18 April 9th, that's genuinely his signature?

19 A. Can I see?

20 Q. Exhibit 28 is a petition that was filed with
21 the court. I'm going to just show you the exhibits.

22 Exhibit A says "Petition for discharge full waiver."

23 Is this a document you would have prepared for
24 Simon Bernstein to sign?

25 A. Yeah, our firm would prepare that.

1 Q. Okay. And it's a three-page document.

2 Is that Simon Bernstein's signature --

3 A. Yes, it is.

4 Q. -- April 9th, 2012?

5 A. Yes, he signed the document.

6 Q. And he was alive when he signed the document?

7 A. Yes, he was.

8 Q. Okay. Then he had to sign a waiver of
9 accounting, which he signed on the same day?

10 A. Correct.

11 Q. And you have a document waiver of accounting
12 on the next page signed by Eliot Bernstein on May 15th?

13 A. Correct.

14 Q. And there's no doubt that's Eliot's signature
15 because he's the one who emailed you the document,
16 correct?

17 A. And sent us the original by mail.

18 Q. Right. And we already have an exhibit which
19 is his email that sent you his waiver form?

20 A. Correct.

21 Q. And the waiver forms of Ted, Pam, Lisa and
22 Jill are all valid, signed by them on the date that they
23 indicated they signed it?

24 A. To the best of my knowledge, yes.

25 Q. So then these got submitted to the court.

1 Is there anything wrong with submitting waiver
2 forms to the court signed by Simon while he's alive
3 after he had passed away?

4 A. Maybe we should have made a motion to, you
5 know, have a successor PR appointed and file the
6 documents through the successor PR.

7 Q. Were you trying to just save expenses because
8 there was nothing in the estate?

9 A. Correct.

10 Q. And if Judge Colin had not rejected -- or his
11 assistant had not rejected the documents, and the estate
12 was closed, it would have been closed based on
13 legitimate, properly signed documents of Simon and his
14 five children?

15 A. Correct.

16 Q. So then they get kicked back to your law firm,
17 and you could file a motion and undertake some expense,
18 instead --

19 MR. BERNSTEIN: Object. This has been asked
20 and answered.

21 THE COURT: Sustained.

22 BY MR. ROSE:

23 Q. Now, does the fact that -- well, strike that.

24 At the time that Simon signed his 2012 will
25 and 2012 trust, had there been ever anyone question a

1 signature or a notarization of any document that had
2 been prepared by your law firm?

3 A. No, there was not.

4 Q. You didn't see anything or observe anything or
5 any behavior of Simon Bernstein during the course of any
6 meeting you had with him that would call into question
7 his competence or his ability to properly execute a
8 testamentary document?

9 A. We did not.

10 MR. ROSE: Nothing further, Your Honor.

11 THE COURT: All right. Thanks.

12 Thank you, sir. You can step down.

13 MR. ROSE: At this time, we would rest our
14 case.

15 THE COURT: Okay. Thank you.

16 Any evidence from the defendant's side?

17 MR. BERNSTEIN: Well, I'd like -- can I call
18 back Spallina?

19 THE COURT: If you want to call him as a
20 witness on your behalf, sure.

21 MR. BERNSTEIN: Yeah, sure.

22 THE COURT: All right. Mr. Spallina, you're
23 still under oath, and you're being called as a
24 defense witness now.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Mr. Spallina, when Simon died on
3 September 12th -- or September 13th -- sorry -- 2012,
4 and you were responsible as his attorney to appoint Ted
5 as the successor, correct, you were in charge of his
6 wills and trusts?

7 THE COURT: You just asked three questions in
8 a row.

9 MR. BERNSTEIN: Oh, sorry.

10 THE COURT: Which question would you like the
11 witness to answer?

12 BY MR. BERNSTEIN:

13 Q. Okay. When Simon died, was Shirley's estate
14 closed?

15 A. No, it was not.

16 Q. Okay. Did you appoint a successor to Simon
17 who was the personal representative of Shirley on the
18 day he died?

19 A. I don't understand the question.

20 Q. Well, on the day Simon died, there was a
21 successor to him in the will, correct?

22 A. That's correct. Ted.

23 Q. Okay. Did you appoint Ted?

24 A. I did not appoint Ted. Si did.

25 Q. Si appointed Ted?

1 A. Si appointed Ted as a successor trustee under
2 the document -- I mean, Shirley appointed Ted as the
3 successor trustee to Si under the document.

4 Q. So Simon didn't appoint Ted?

5 A. Simon did not appoint Ted.

6 Q. Okay.

7 A. He was the named successor under your mother's
8 document.

9 Q. Okay. So when Simon died -- just so I get all
10 this clear, when Simon died, your law firm knew Ted was
11 the successor, correct?

12 A. That's correct.

13 Q. According to your story. Okay.

14 A. Under Shirley's documents, you're talking
15 about.

16 Q. Under the alleged Shirley document.

17 Okay. But yet did Simon then -- after he
18 died, did he not close the estate of Shirley while he
19 was dead?

20 MR. ROSE: Objection. Argumentative. It's
21 cumulative.

22 THE COURT: Sustained.

23 MR. ROSE: And I believe this whole line of
24 questioning's been covered ad nauseam in the first
25 cross-examination.

1 THE COURT: Well, it's important not to ask
2 the same thing over and over again. You have
3 finite time to work with.

4 MR. BERNSTEIN: Okay.

5 BY MR. BERNSTEIN:

6 Q. The estate of Shirley was closed in January,
7 correct, of 2013?

8 A. I don't recall, but it sounds -- it has to be
9 sometime after November.

10 Q. Okay. So it was closed by Simon, who was dead
11 at that time, correct?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Did Ted Bernstein close the Estate of Shirley
16 Bernstein as the successor personal representative?

17 A. No.

18 Q. Who closed the Estate of Shirley Bernstein?

19 A. The documents were filed with the court based
20 on the original petition that your father signed.

21 Q. Did you close the estate?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: What's the relevance?

24 MR. BERNSTEIN: Well, I'm trying to figure out
25 who closed my mom's estate.

1 THE COURT: What's the relevance I've got to
2 figure out?

3 MR. BERNSTEIN: Okay. The documents, they
4 were bringing up these waivers. There's relevance
5 to this.

6 THE COURT: Well, I'll sustain the objection.

7 MR. BERNSTEIN: Okay.

8 BY MR. BERNSTEIN:

9 Q. On this petition for discharge that Mr. Rose
10 brought up on his cross -- and I can't remember where I
11 just pulled that -- I'm going to take a look. That
12 would be 28.

13 MR. BERNSTEIN: Can I admit this into
14 evidence, Your Honor, since I believe Mr. Rose
15 stated it wasn't?

16 THE COURT: You're just picking up a piece of
17 paper and walking up to me and saying, can I admit
18 this into evidence?

19 MR. BERNSTEIN: Well, they didn't admit it.

20 THE COURT: Is there a foundation laid for its
21 admissibility?

22 MR. BERNSTEIN: Yes.

23 THE COURT: Do I know what it is so that I can
24 make a ruling?

25 MR. BERNSTEIN: Oh. It's a petition for

1 discharge.

2 THE COURT: Did anybody testify to that, or
3 are you just --

4 MR. BERNSTEIN: Yeah, he just did.

5 THE COURT: If you have a piece of paper you
6 want to have me consider as an exhibit, the other
7 side has to have seen it and the witness has to
8 have seen it so I'll know what it is.

9 MR. BERNSTEIN: Okay. They were just talking
10 about it.

11 MR. ROSE: Your Honor, just to speed things
12 along, we have no objection to this document coming
13 into evidence. It is part of our Exhibit 28. The
14 whole 28 could come in evidence. That's fine with
15 me. Then it would all be in evidence. Or however
16 you wish to do it.

17 THE COURT: I'm letting this party take charge
18 of his own case.

19 Are you asking that to be received as an
20 exhibit? There's no objection. So that'll be
21 Defendant's 3. Hand that up, and I'll mark it.

22 MR. BERNSTEIN: Thank you.

23 (Defendant's Exhibit No. 3 was received into
24 evidence.)

25

1 THE COURT: So are you done with it?

2 MR. BERNSTEIN: No. Can I use it still?

3 THE COURT: Anything that's supposed to be an
4 exhibit in evidence has to come back to me.

5 MR. BERNSTEIN: Gotcha.

6 BY MR. BERNSTEIN:

7 Q. Okay. On this document, it's a petition for a
8 discharge, a "full waiver," it says.

9 Was this document sent back to your firm as
10 not notarized by Judge Colin's office?

11 A. I'm not sure. I didn't get the documents
12 back.

13 Q. Is it notarized?

14 A. No, it's not.

15 Q. Did you sign as the notary?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Overruled.

18 The question was, is it notarized? The answer
19 was no. Then you asked if -- somebody else, if
20 they'd sign, and then the witness if he signed as a
21 notary.

22 THE WITNESS: I signed it as the attorney for
23 the estate.

24 BY MR. BERNSTEIN:

25 Q. Okay. On April 9th with Simon Bernstein?

1 A. Yeah, it appears that way.

2 Q. Could it be another way?

3 A. It didn't -- this document did not require
4 that I witness Si's signature. So I believe that that
5 document was sent to Si, and he signed it, sent it back,
6 we signed it and filed it.

7 Q. So you sent it to Si, he signed it, then sent
8 it back, and you signed it all on April 9th?

9 A. It doesn't -- it's what day he signed it
10 that's relevant. He signed it on April 9th.

11 Q. And what day did you sign it?

12 A. I could have signed it April 11th.

13 Q. Well, where does it say April 11th?

14 A. My signature doesn't require a date. His
15 does.

16 Q. Why?

17 A. Just doesn't.

18 Q. Well, the date that the document says this
19 document's being signed on April 9th.

20 A. I did not sign that exhibit.

21 Q. Next question. On September 13, 2013, the
22 year after my father died, in Judge Martin Colin's
23 court, when he discovered this document, did he threaten
24 to read you your Miranda Rights, stating he had enough
25 evidence to read you Mirandas?

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Did you deposit this document, this April 9th
5 full discharge, with the court?

6 A. Did I personally do it?

7 Q. Did your law firm?

8 A. No, the law firm did, yes.

9 Q. Okay. And on whose behalf?

10 MR. ROSE: Objection. Cumulative.

11 THE COURT: Sustained.

12 MR. ROSE: And relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Simon was dead when this document was
16 deposited with the court, correct?

17 MR. ROSE: Objection. Cumulative. Relevance.

18 THE COURT: I've got that he is dead written
19 down here several times. It's clear in my mind.

20 You're not moving in a positive direction.

21 MR. BERNSTEIN: I understand that part.

22 THE COURT: All right. New question, please.

23 MR. BERNSTEIN: Okay.

24 BY MR. BERNSTEIN:

25 Q. Is this document sworn to and attested by my

1 father? Is it a sworn statement? Does it say "under
2 penalties of perjury"?

3 A. It does.

4 Q. Okay. So under penalties of perjury, on
5 April 9th, my father and you signed a document, it
6 appears, that states that Simon has fully administered
7 the estate.

8 Was that done?

9 A. Yes, it was.

10 Q. He had settled the estate, made dispositions
11 of all claims of Shirley's estate?

12 A. He was the only beneficiary of the estate.
13 The creditor period had passed.

14 Q. He was the only beneficiary of the will?

15 A. He was the only beneficiary of the will if
16 he -- that's if he survived your mother.

17 Q. Did you say earlier that the five children
18 were tangible personal property devisees or
19 beneficiaries under the will?

20 A. I did not. I said your father was the sole
21 beneficiary of your mother's estate by virtue of
22 surviving her.

23 Q. I thought you mentioned -- can I take a look
24 at the will?

25 Okay. On Simon's will, which is Exhibit 4

1 here --

2 A. This is your mother's will we're talking
3 about.

4 Q. Well, hold on. Well, you did state there were
5 mirror documents, correct, at one point? That's okay.
6 I'll proceed. That part seems to be in error.

7 Does the document say, "I, Shirley Bernstein,
8 of Palm Beach County, Florida hereby revoke all of my
9 prior wills and codicils and make this will my spouse's
10 assignment. My children are Ted, Pam -- Pamela Simon,
11 Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

12 MR. ROSE: Objection. Best evidence and
13 cumulative.

14 THE COURT: Sustained.

15 MR. BERNSTEIN: Okay.

16 BY MR. BERNSTEIN:

17 Q. Was there a separate written memorandum
18 prepared for this will?

19 A. No, there was not.

20 Q. And if Simon didn't survive, the property
21 would be going to the children, correct?

22 MR. ROSE: Objection.

23 THE WITNESS: Correct.

24 MR. ROSE: Best evidence and cumulative.

25 THE COURT: Sustained.

1 MR. BERNSTEIN: What was -- I missed that.

2 Can I not ask him that question I just asked?

3 THE COURT: I sustained the objection. You
4 can ask a new question of him.

5 MR. BERNSTEIN: Okay.

6 BY MR. BERNSTEIN:

7 Q. Is there any chance that the children could be
8 beneficiaries of anything under this will?

9 A. Not at the time of your mother's death. Your
10 father survived.

11 Q. So at the time of her death, you're saying
12 that -- if they both died together, would the
13 children --

14 MR. ROSE: Objection. Relevancy.

15 BY MR. BERNSTEIN:

16 Q. -- be beneficiaries?

17 THE COURT: Sustained.

18 MR. BERNSTEIN: Okay. I'm done with him.

19 MR. ROSE: No questions.

20 THE COURT: Okay. Thank you. You can step
21 down now.

22 Next witness, please.

23 MR. BERNSTEIN: My next witness, are you
24 saying?

25 THE COURT: If you have another witness, now's

1 the time to call him or her.

2 MR. BERNSTEIN: Okay. Ted Bernstein -- well,
3 one second.

4 Is Kimberly Moran, your witness, here? Is
5 Kimberly Moran, an exhibited witness, here,
6 Mr. Rose?

7 THE COURT: Listen, it's your case. I've
8 asked if you have any other witnesses. Do you have
9 any other witnesses?

10 MR. BERNSTEIN: No, I don't. I was going to
11 call some of their witnesses, but they're not here.

12 THE COURT: Okay. So you aren't going to call
13 anybody?

14 MR. BERNSTEIN: Yes, I'm going to call Ted
15 Bernstein.

16 THE COURT: Well, that's a witness, right?

17 MR. BERNSTEIN: Yeah, yeah. I just was
18 looking for the other ones on the witness list. I
19 didn't know if they were sitting outside.

20 Thereupon,

21 (TED BERNSTEIN)

22 having been first duly sworn or affirmed, was examined
23 and testified as follows:

24 THE WITNESS: I do.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Ted --

3 THE COURT: You've got to ask the witness his
4 name. The record needs to reflect who's
5 testifying.

6 MR. ROSE: And could I just ask that he stay
7 at the podium?

8 THE COURT: Okay. You need to stay near the
9 microphone so that I can hear and the court
10 reporter can accurately hear you. And then if you
11 need to go up to the witness stand for some reason,
12 you're allowed to do that.

13 BY MR. BERNSTEIN:

14 Q. State your name for the record.

15 A. Ted Bernstein.

16 Q. Is that your full formal name?

17 A. That is.

18 Q. Do you go by Theodore Stuart Bernstein ever?

19 A. I do not.

20 Q. Okay. Is that your name on your birth
21 certificate?

22 A. Which one?

23 Q. Theodore Stuart Bernstein?

24 A. It is not.

25 Q. Okay. Ted, you were made aware of Robert

1 Spallina's fraudulent alteration of a trust document of
2 your mother's when?

3 A. I believe that was in the early 2013 or '14.

4 Q. Okay. And when you found out, you were the
5 fiduciary of Shirley's trust, allegedly?

6 A. I'm not sure I understand the question.

7 Q. When you found out that there was a fraudulent
8 altercation [sic] of a trust document, were you the
9 fiduciary in charge of Shirley's trust?

10 A. I was trustee, yes. I am trustee, yes.

11 Q. And your attorneys, Tescher and Spallina, and
12 their law firm are the one who committed that fraud,
13 correct, who altered that document?

14 A. That's what's been admitted to by them,
15 correct.

16 Q. Okay. So you became aware that your counsel
17 that you retained as trustee had committed a fraud,
18 correct?

19 A. Correct.

20 Q. What did you do immediately after that?

21 A. The same day that I found out, I contacted
22 counsel. I met with counsel on that very day. I met
23 with counsel the next day. I met with counsel the day
24 after that.

25 Q. Which counsel?

1 A. Alan Rose.

2 Q. Oh. Okay. So he was -- so Tescher and
3 Spallina were your counsel as trustee, but Alan Rose
4 became that day?

5 A. I'm not sure when, but I consulted him
6 immediately. You asked me when.

7 MR. ROSE: Can I caution the witness that it's
8 fine to say who he consulted with. I think the
9 advice was the attorney-client privilege I would
10 instruct him on.

11 THE COURT: All right. The attorney-client
12 privilege is available, and your client is on the
13 stand. Counsel's reminding him that it exists.

14 Are there any other questions? What is the
15 time period that you're asking about here?

16 MR. BERNSTEIN: Right after he discovered that
17 there had been a fraudulent, invalid will created.

18 THE COURT: Right. And you're asking him what
19 he did afterwards?

20 MR. BERNSTEIN: Right afterwards.

21 THE COURT: Okay. Have your mother and father
22 both passed away at the time you're asking him
23 that?

24 MR. BERNSTEIN: Correct.

25 THE COURT: So the validity of the documents

1 that I've got to figure out won't have anything to
2 do with the questions you're asking him now about
3 his actions at trustee, will they?

4 MR. BERNSTEIN: Yes.

5 THE COURT: Tell me how.

6 MR. BERNSTEIN: Okay. Because, Your Honor,
7 when he found out that there was fraud by his
8 attorneys that he retained, the question is, what
9 did they do with those documents? Did he come to
10 the court to correct --

11 THE COURT: The question you're asking him is
12 what did he do.

13 MR. BERNSTEIN: Yeah.

14 THE COURT: Well, that doesn't tell me
15 anything about what the attorneys did. So I'll
16 sustain my own objection. I want to keep you on
17 track here. You're running out of time, and I want
18 you to stay focused on what I've got to figure out.
19 You've got a lot more on your mind than I do. I
20 explained that to you earlier. Do you have any
21 other questions on the issues that I've got to
22 resolve at this point?

23 MR. BERNSTEIN: Yeah.

24 BY MR. BERNSTEIN:

25 Q. Have you seen the original will and trust of

1 your mother's?

2 A. Can you define original for me?

3 Q. The original.

4 A. The one that's filed in the court?

5 Q. Original will or the trust.

6 A. I've seen copies of the trusts.

7 Q. Have you done anything to have any of the
8 documents authenticated since learning that your
9 attorneys had committed fraud in altering dispositive
10 documents that you were in custody of?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I have not.

14 BY MR. BERNSTEIN:

15 Q. So you as the trustee have taken no steps to
16 validate these documents; is that correct?

17 A. Correct.

18 Q. Why is that?

19 A. I'm not an expert on the validity of
20 documents.

21 Q. Did you contract a forensic analyst?

22 A. I'm retained by counsel, and I've got counsel
23 retained for all of this. So I'm not an expert on the
24 validity of the documents.

25 Q. You're the fiduciary. You're the trustee.

1 You're the guy in charge. You're the guy who hires your
2 counsel. You tell them what to do.

3 So you found out that your former attorneys
4 committed fraud. And my question is simple. Did you do
5 anything, Ted Bernstein, to validate these documents,
6 the originals?

7 THE COURT: That's already been answered in
8 the negative. I wrote it down. Let's keep going.

9 MR. BERNSTEIN: Okay.

10 BY MR. BERNSTEIN:

11 Q. As you sit here today, if the documents in
12 your mother's -- in the estates aren't validated and
13 certain documents are thrown out if the judge rules them
14 not valid, will you or your family gain or lose any
15 benefit in any scenario?

16 A. Can you repeat that for me, please? I'm not
17 sure I'm understanding.

18 Q. If the judge invalidates some of the documents
19 here today, will you personally lose money, interest in
20 the estates and trusts as the trustee, your family, you?

21 A. I will not.

22 Q. Your family?

23 A. My -- my children will.

24 Q. So that's your family?

25 A. Yes.

1 Q. Okay. So do you find that as a fiduciary to
2 be a conflict?

3 MR. ROSE: Objection.

4 THE WITNESS: No.

5 MR. ROSE: I think it calls for a legal
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Well, would it matter to you one way or the
10 other how these documents are validated?

11 A. What would matter to me would be to follow the
12 documents that are deemed to be valid and follow the
13 court orders that suggest and deem that they are valid.
14 That would be what I would be charged to do.

15 Q. So you can sit here today and tell me that the
16 validity of these documents, even though your family
17 will lose 40 percent, has no effect on you?

18 A. It has no effect on me.

19 Q. Okay. And you don't find that to be adverse
20 to certain beneficiaries as the trustee?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Well, what difference does it make
24 to me? I mean, what he thinks about his role is
25 just not relevant to me.

1 MR. BERNSTEIN: Well, Your Honor --

2 THE COURT: So the next question, please.

3 That's not relevant.

4 BY MR. BERNSTEIN:

5 Q. So in no way have you tried to authenticate
6 these documents as the trustee?

7 THE COURT: He has already said that. That's
8 the third time you've asked it, at least. And I've
9 written it down. It's on my papers.

10 MR. BERNSTEIN: Okay. I'll let it go. I'll
11 let him go today.

12 THE COURT: Okay. You have no further
13 questions of the witness.

14 Is there any cross?

15 MR. ROSE: Briefly.

16 CROSS (TED BERNSTEIN)

17 BY MR. ROSE:

18 Q. You did a few things to authenticate the
19 documents, didn't you? You filed a lawsuit?

20 A. Yes.

21 Q. In fact, we're here today because you filed a
22 lawsuit to ask this judge to determine if these five
23 documents are valid, correct?

24 A. That's correct.

25 Q. And you fired Mr. Tescher and Spallina on the

1 spot?

2 A. Correct.

3 Q. Called the bar association?

4 A. The next business day.

5 Q. You consulted with counsel, and we retained
6 additional probate counsel over the weekend?

7 A. We did.

8 Q. So as far as authenticating the documents, you
9 personally believe these are genuine and valid
10 documents, right?

11 A. I do.

12 Q. And you, in fact, were in your office the day
13 your father signed them?

14 A. That's correct.

15 Q. And witnessed Mr. Spallina and the notary
16 coming to the office to sign the documents?

17 A. Yes, that's right.

18 Q. And you had been on a conference call with
19 your father, your brother and your three sisters where
20 your father told you exactly what he was going to do?

21 A. That is also correct.

22 Q. And the documents that we're looking at today
23 do exactly what your father told everybody, including
24 your brother, Eliot, he was going to do on the
25 conference call in May of 2012?

1 A. Yes, that is correct also.

2 Q. Now, I think you were asked a good question.

3 Do you care one way or the other how these
4 documents are decided by the Court?

5 A. Absolutely not.

6 Q. Did you care when your father or mother made a
7 document that did not specifically leave any money to
8 you?

9 A. I did not.

10 Q. Now, did you care for anybody other than
11 yourself?

12 A. I cared for the -- for the sake of my
13 children.

14 Q. And why did you care for the sake of your
15 children?

16 A. My parents had a very good relationship with
17 my children, and I did not want my children to
18 misinterpret what the intentions of their grandparents
19 were and would have been. And for that reason, I felt
20 that it would have been difficult for my children.

21 Q. Did you ever have access to the original will
22 of your father or mother that were in the Tescher &
23 Spallina vaults?

24 A. I have no access, no.

25 Q. Did you ever have access to the original

1 copies of the trusts that Mr. Spallina testified were
2 sitting in their firm's file cabinets or vaults?

3 A. I did not.

4 Q. Now, did you find in your father's possessions
5 the duplicate originals of the trusts of him and your
6 mother that we've talked about?

7 A. I did.

8 Q. And do you have any reason to believe that
9 they aren't valid, genuine and signed by your father on
10 the day that he -- your father and your mother on the
11 days that it says they signed them?

12 A. None whatsoever.

13 Q. You need to get a ruling on whether these five
14 documents are valid in order for you to do your job as
15 the trustee, correct?

16 A. Yes, that is correct.

17 Q. Whichever way the Court rules, will you follow
18 the final judgment of the Court and exactly consistent
19 with what the documents say, and follow the advice of
20 your counsel in living up to the documents as the Court
21 construes them?

22 A. Always. A hundred percent.

23 MR. ROSE: Nothing further, sir.

24 THE COURT: All right. Thank you.

25 Is there any redirect?

1 REDIRECT (TED BERNSTEIN)

2 BY MR. BERNSTEIN:

3 Q. You just stated that you came to the court and
4 validated the documents in this hearing today; is that
5 correct?

6 MR. ROSE: Objection. It mis --

7 BY MR. BERNSTEIN:

8 Q. You filed a motion to validate the documents
9 today?

10 THE COURT: Wait. You've got to let me rule
11 on the objection.

12 MR. BERNSTEIN: Oh, sorry. I don't hear any
13 objection.

14 THE COURT: I'll sustain the objection.

15 BY MR. BERNSTEIN:

16 Q. Okay. Since -- did you file a motion that
17 we're here for today for validity?

18 A. Explain motion.

19 Q. A motion with the court for a validity hearing
20 that we're here at right now.

21 A. Do you mean the lawsuit?

22 Q. Well, yeah.

23 A. Yes, we did file a lawsuit, yes.

24 Q. Okay. Do you know when you filed that?

25 A. No. I don't know, Eliot. I don't know when I

1 filed it. I don't have it committed to memory.

2 Q. Do you have an idea?

3 MR. ROSE: Objection. I think the court file
4 will reflect when the case was filed.

5 THE COURT: Overruled.

6 The question was answered, I don't know. Next
7 question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Prior to filing this lawsuit, Mr. Rose said
11 you couldn't do anything because you didn't know if the
12 documents were valid.

13 My question is, did you do anything from the
14 time you found out the documents might not be valid and
15 needed a validity hearing to today at this validity
16 hearing?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: What's the relevance?

19 MR. BERNSTEIN: Well, he knew about these
20 documents being fraudulent for X months.

21 THE COURT: What will that help me decide on
22 the validity of the five documents?

23 MR. BERNSTEIN: Why, Your Honor, they didn't
24 come to the court knowing that they needed a
25 validity hearing, and instead disposed and

1 disbursed of assets while they've known all this
2 time --

3 THE COURT: I'll sustain the objection.

4 I'm not called to rule upon that stuff. I'm
5 called to rule upon the validity of these five
6 paper documents. That's what I'm going to figure
7 out at the end of the day.

8 BY MR. BERNSTEIN:

9 Q. Mr. Rose asked you if you found documents and
10 they all looked valid to you, and you responded yes.

11 Are you an expert?

12 A. I am not.

13 Q. Can you describe what you did to make that
14 analysis?

15 A. They looked like they were their signatures on
16 the documents. I had no reason whatsoever to think
17 those weren't the documents that were their planning
18 documents. I had no reason at all to think that.

19 Q. Even after your hired attorneys that were
20 representing you admitted fraud, you didn't think there
21 was any reason to validate the documents?

22 MR. ROSE: Objection. Argumentative.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. Did you find any reason to validate these

1 documents forensically?

2 A. I think I answered that by saying that we
3 filed a lawsuit.

4 Q. No, I'm asking you to have a
5 forensic -- you're the trustee. And as a beneficiary --
6 to protect the beneficiaries, do you think you should
7 validate these documents with a handwriting expert due
8 to the fact that we have multiple instances of fraud by
9 your counsel who were acting on your behalf?

10 MR. ROSE: Objection. Cumulative and
11 argument.

12 THE COURT: The question is, does he think
13 something. I've already told you when you ask a
14 question do you think, I stop listening. It's not
15 relevant what the witness thinks.

16 So I'll sustain the objection.

17 BY MR. BERNSTEIN:

18 Q. As a trustee, would you find it to be your
19 fiduciary duty upon learning of document forgeries and
20 frauds by your counsel to have the dispositive documents
21 you're operating under validated by a professional
22 handwriting expert, forensic expert, et cetera?

23 MR. ROSE: Objection. Cumulative.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you think these documents should be
3 validated -- you're the trustee.

4 Do you think these documents should be
5 validated by a professional firm forensically?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: It's not relevant. You just asked
8 him if he thinks he should have had them validated.
9 I don't care what he thinks. In making my
10 decisions today, what he thinks he should have done
11 or not done isn't relevant. I'm looking for facts.
12 So I really wish you would address your questions
13 to facts.

14 BY MR. BERNSTEIN:

15 Q. So, to the best of your knowledge, have these
16 documents been forensically analyzed by any expert?

17 MR. ROSE: Objection. Cumulative.

18 THE COURT: No, they are not. I already know
19 that. I wrote it down. He's already said they've
20 not been.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Ted, when your father signed, allegedly, his
24 2012 documents in July, were you aware of any medical
25 problems with your father?

1 A. I don't think so.

2 Q. Were you aware that I took him for a biopsy of
3 his brain?

4 A. I'm not aware of that, no.

5 Q. Were you aware of the headaches he was
6 suffering that caused him to go for a biopsy of his
7 brain?

8 A. I don't believe he had a biopsy of his brain.
9 But if he did, then I'm not aware of it.

10 Q. Oh, okay. Were you aware of headaches your
11 father was suffering?

12 A. I recall he was having some headaches.

13 Q. Were you aware that he was seeing a
14 psychiatrist?

15 A. Yes.

16 Q. Were you aware of the reasons he was seeing a
17 psychiatrist?

18 A. Absolutely not.

19 Q. Were you ever in the psychiatrist's office
20 with him?

21 A. Yes.

22 Q. For what reason?

23 A. I wanted to have a conversation with him.

24 Q. About?

25 A. About some personal issues that I wanted to

1 discuss with him.

2 Q. Personal issues such as?

3 MR. ROSE: Can I get clarification? Are you
4 talking about you wanted to -- he may have a
5 privilege.

6 You were discussing Simon's issues or your own
7 personal issues?

8 THE WITNESS: They were both intertwined
9 together.

10 MR. ROSE: I think it's subject to a
11 privilege.

12 THE COURT: All right. Well, you've been
13 warned by your attorney you've got a
14 psychologist-client privilege, so use it as you
15 will.

16 MR. BERNSTEIN: He's not a client of the
17 psychiatrist, I don't think.

18 THE COURT: I beg to differ with you.

19 MR. BERNSTEIN: Oh, he is?

20 THE COURT: Because the answer just clarified
21 that he was in part seeking to be a client. Did
22 you listen to his clarification of his answer?

23 MR. BERNSTEIN: No.

24 THE COURT: Well, I did very closely.

25 MR. BERNSTEIN: What was it?

1 THE COURT: Next question, please.

2 MR. BERNSTEIN: Okay. I'll just see it on the
3 transcript.

4 BY MR. BERNSTEIN:

5 Q. Were you aware of any medical conditions,
6 depression, anything like that your father was
7 experiencing prior to his death?

8 A. I never found our father to suffer from any
9 kind of depression or anything like that during his
10 lifetime.

11 Q. So after your mother died, he wasn't
12 depressed?

13 A. No.

14 MR. ROSE: Could I again ask Mr. Bernstein to
15 step to the podium and not be so close to my
16 client?

17 THE COURT: If you speak into the microphone,
18 it'll be even more easy to hear your questions.

19 Thank you.

20 BY MR. BERNSTEIN:

21 Q. So, according to you, your father's state of
22 mind was perfectly fine after his wife died of -- a
23 number of years --

24 A. I didn't say that.

25 Q. Okay. He wasn't depressed?

1 A. That's what I said.

2 Q. Were you aware of any medications he was on?

3 A. I was, yes.

4 Q. Such as?

5 A. From time to time, he would take something for
6 your heart when you would have angina pains. But that
7 he was doing for 30 years, for a good 30 years, that I
8 knew dad was taking, whatever that medicine is when you
9 have some chest pain.

10 Q. Did you have any problems with your father
11 prior to his death?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: The question is, did you have any
14 problems with your dad before he died?

15 I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Are you aware of any problems between you and
18 your father that were causing him stress?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Were you aware that your father was changing
23 his documents allegedly due to stress caused by certain
24 of his children?

25 A. No.

1 Q. Were you on a May 10th phone call?

2 A. Yes.

3 Q. In that phone call, did your father --

4 MR. ROSE: Objection. It's beyond the
5 scope -- well --

6 MR. BERNSTEIN: It has to do with the changes
7 of the documents and the state of mind.

8 THE COURT: Do you have a question you want to
9 ask? He's withdrawn whatever he was saying, so you
10 can finish your question.

11 BY MR. BERNSTEIN:

12 Q. Okay. So on May 10th, at that meeting, your
13 father stated that he was having trouble with certain of
14 his children, and this would solve those problems.

15 Are you aware of that?

16 A. No, I don't -- not from the way you're
17 characterizing that phone call.

18 Q. Well, how do you characterize that?

19 A. He wanted to have a conversation with his five
20 children about some changes he was making to his
21 documents.

22 Q. And you had never talked to him about the
23 changes, that your family was disinherited?

24 A. No.

25 Q. Prior to that call?

1 A. No.

2 Q. When did you learn that you were disinherited?

3 A. I think when I first saw documents with --
4 maybe after dad -- once dad passed away.

5 Q. Were you aware of the contact with your sister
6 Pam regarding her anger at your father for cutting both
7 of you out of the will?

8 A. I'm aware of that.

9 Q. So that was before your father passed?

10 A. Excuse me. Can you ask -- say the end of that
11 sentence again.

12 MR. BERNSTEIN: Can you read that back?

13 (A portion of the record was read by the
14 reporter.)

15 THE WITNESS: I'm sorry. You asked me a
16 question, and I had answered too quickly. What was
17 the end of the question prior to that?

18 (A portion of the record was read by the
19 reporter.)

20 THE WITNESS: I'm aware that she was angry
21 with him about how -- that he -- she was not in his
22 documents.

23 BY MR. BERNSTEIN:

24 Q. You didn't learn right there that you weren't
25 in the documents?

1 A. I can't remember if it was then or if it was
2 when dad died.

3 Q. Well, this is very important so can you think
4 back to that time.

5 While your father was alive, did I invite you
6 to a Passover holiday at my home?

7 MR. ROSE: Objection. Relevance.

8 THE WITNESS: I don't recall.

9 MR. BERNSTEIN: Okay.

10 THE COURT: What's the relevance?

11 MR. BERNSTEIN: Well, it's relevance to the
12 state of mind my dad was in while --

13 THE COURT: Well, you're asking did this guy
14 get invited to your home. You didn't ask about
15 your dad, so I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Okay. Did you get invited to a Passover
18 dinner at my home that your father was attending?

19 A. I don't recall the circumstances of
20 what -- whatever it is you're referring to.

21 Q. Do you recall saying you wouldn't come to the
22 Passover dinner?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you recall writing me a email that stated
3 that your family was dead for all intensive [sic]
4 purposes?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: What's the relevance to the
7 validity of these documents?

8 MR. BERNSTEIN: If Si was in the right state
9 of mind or if he was being, you know, forced at a
10 gun to make these changes by children who had --

11 THE COURT: Your question asked this witness
12 if he wrote you a letter that said his family was
13 dead for all intents and purposes. What's that got
14 to do with the validity of these documents?

15 MR. BERNSTEIN: Well, it establishes Simon's
16 state of mind.

17 THE COURT: Okay. I'll sustain the objection.

18 MR. BERNSTEIN: Okay. All right. Well, then,
19 I'm all done then.

20 THE COURT: All right.

21 Is there any cross?

22 MR. ROSE: I already crossed.

23 THE COURT: Oh, that's true. So you're all
24 set. You're done. Thank you.

25 Next witness, please.

1 MR. BERNSTEIN: Alan Rose.

2 MR. ROSE: I object. Improper.

3 THE COURT: You've got 11 minutes yet.

4 MR. BERNSTEIN: Well, he's a witness to the
5 chain of custody in these documents.

6 THE COURT: Well, you can call anybody you
7 want. I just wanted you to know how much time you
8 had left.

9 MR. BERNSTEIN: Oh, okay.

10 MR. ROSE: He wants to call me, and I object
11 to being called as a witness.

12 THE COURT: Okay.

13 MR. ROSE: I don't think that's proper.

14 THE COURT: I don't think that's proper to
15 call an attorney from the other side as your
16 witness. So I accept the objection. Anybody else?

17 MR. BERNSTEIN: Your Honor, I would agree with
18 that normally --

19 THE COURT: Well, thanks.

20 MR. BERNSTEIN: -- but there's a small
21 problem. The chain of custody we're trying to
22 follow in these documents for other reasons, other
23 criminal reasons, is Mr. Rose has pertinent
24 information to; meaning, he claims to have
25 discovered some of these documents and taken them

1 off the property.

2 THE COURT: I thought you said you wanted a
3 chain of custody?

4 MR. BERNSTEIN: Right. Meaning --

5 THE COURT: Well, the chain of custody to me
6 means the chain of custody after the time they were
7 executed.

8 MR. BERNSTEIN: Right.

9 THE COURT: All right. He wasn't around when
10 they were executed.

11 MR. BERNSTEIN: No, but he found documents
12 that are being inserted into this court case as
13 originals, second originals that he found
14 personally, and wrote a letter stating, I just
15 happened to find these documents in Simon's home --

16 THE COURT: Well, I'm going to sustain the
17 objection to you calling him as a surprise witness.
18 He's a representative of your own. Do you have any
19 other witnesses?

20 MR. BERNSTEIN: No. I'm good.

21 THE COURT: Okay. So you rest?

22 MR. BERNSTEIN: I rest.

23 THE COURT: Okay. Is there any rebuttal
24 evidence from the plaintiff's side?

25 MR. ROSE: No, sir.

1 THE COURT: Okay. So the evidence is closed.
2 We'll have time for brief closing arguments. And
3 I'll take those now. Let me hear first from the
4 plaintiff's side.

5 MR. ROSE: I'm sorry. Did you say it was time
6 for me to speak?

7 THE COURT: Yes. I'm taking closing arguments
8 now.

9 MR. ROSE: Okay. Thank you. May it please
10 the Court.

11 We're here on a very narrow issue. And
12 we -- you know, I apologize to the extent I put on
13 a little bit of background. We've had an extensive
14 litigation before Judge Colin. This is our first
15 time here. And if any of my background bored you,
16 I apologize.

17 There are five documents that are at issue,
18 which we talked about before we started; the 2008
19 will and trust of Shirley Bernstein, as well as the
20 amendment that she signed, and then the 2012 will
21 and trust of Simon Bernstein.

22 So the uncontroverted evidence that you've
23 heard was from Robert Spallina, who is an attesting
24 witness to the documents and he was a draftsman of
25 the documents.

1 I don't believe it's directly relevant to your
2 inquiry, but you certainly heard evidence that what
3 Simon Bernstein intended and what he communicated
4 were his wishes; the exercise of a power of
5 appointment through a will, the changing of the
6 beneficiaries of his trust document by way of an
7 amended and restated 2012 document, to give his
8 money -- leave his wealth to his ten grandchildren.
9 The final documents as drafted and signed are
10 consistent with what.

11 But what we're here to decide is, are these
12 documents valid and enforceable? And there are
13 self-proving affidavits attached to the documents.
14 And by themselves, if you find the self-proving
15 affidavits to be valid, then the wills themselves
16 are valid and enforceable.

17 Now, the only question that's been raised as
18 to the self-proving affidavit is an issue with
19 notarization. And we have two cases to cite to the
20 Court on the notarization issue. One is from the
21 Florida Supreme Court called The House of Lyons,
22 and one is from a sister court in the State of
23 North Carolina.

24 THE COURT: Just a second.

25 Sir, would you just have a seat. You're

1 making me nervous.

2 MR. BERNSTEIN: Sure.

3 THE COURT: Thanks.

4 MR. BERNSTEIN: Just aching.

5 THE COURT: Well, I understand. But just have
6 a seat. That'll be better. Thanks.

7 And I'm sorry for the interruption.

8 MR. ROSE: No, that's all right.

9 If I may I approach with the two cases we
10 would rely on.

11 THE COURT: All right.

12 MR. ROSE: The House of Lyons. The second is
13 a case from Georgia. The House of Lyons case is
14 from the Florida Supreme Court. It deals in a
15 slightly different context, but it deals with
16 notarization. And so what you have here is, we've
17 put on evidence. The documents that are in
18 evidence, that these documents were signed
19 properly. The witnesses were in the presence of
20 each other, and the testator and the notary
21 notarized them.

22 Shirley's documents from 2008, there's no
23 question that all the boxes were checked. There is
24 a question that's been raised with regard to
25 Simon's 2012 will and his 2012 trust; that the

1 notary -- rather than the law firm employee
2 notarizing them, these were notarized by Simon's --
3 the testimony is by an employee of Simon's company,
4 not a legal expert. And if on the face of the two
5 documents -- and for the record, these would be
6 Exhibits 4, which is Simon's will, and Exhibit 5,
7 which is Simon's trust.

8 On Exhibit 4, there's no box to check. The
9 whole information is written out. And I don't
10 believe there's any requirement that someone
11 circled the word -- if you just read it as an
12 English sentence, the notary confirmed that it was
13 sworn to and ascribed before me the witness is
14 Robert L. Spallina, who is personally known to me
15 or who has produced no identification.

16 So I think the natural inference from that
17 sentence is that person was known to him, Kimberly
18 Moran, who was personally known to me, and Simon
19 Bernstein, who was personally known to me. So on
20 its face, I think it -- the only inference you
21 could draw from this is that the person knew them.

22 Now, we've established from testimony that she
23 in fact knew the three of them, and we've
24 established by way of Exhibit 16, which was signed
25 on the same day and notarized by the same person.

1 And Exhibit 16, unlike Exhibit 4, which doesn't
2 have a little check mark, Exhibit 16 has a check
3 mark, and the notary properly checks personally
4 known to the people that she was notarizing.

5 So I believe -- and the In Re Lyon case stands
6 for substantial compliance with a notary is
7 sufficient. And the North Carolina case is
8 actually more directly on point. The Florida
9 Supreme Court case, Lyons -- and we've highlighted
10 it for the Court, but it says, clerical errors will
11 not be permitted to defeat acknowledges --
12 acknowledgments when they, considered either alone
13 or in connection with the instrument acknowledged
14 and viewed in light of the statute controlling
15 them, fairly show a substantial compliance with the
16 statute.

17 The North Carolina case is a will case, In Re
18 Will of Durham. And there it's exactly our case.
19 The notary affidavit was silent as to whether the
20 person was personally known or not. And the Court
21 held the caveat was self-proving. The fact that
22 the notary's affidavit is silent as to whether
23 decedent was personally known to the notary or
24 produced satisfactory evidence of his identity does
25 not show a lack of compliance with the notary

1 statute, given the issues of personal knowledge or
2 satisfactory evidence are simply not addressed in
3 that affidavit.

4 So we have a Florida case and we have the
5 North Carolina case, which I think is -- it's
6 obviously not binding, but it is sort of
7 persuasive. If they're self-proved, we would win
8 without any further inquiry. The reason we had a
9 trial and the reason we had to file a complaint was
10 everything in this case -- you've slogged through
11 the mud with us for a day, but we've been slogging
12 through the mud for -- basically, I got directly
13 involved in January of 2014, after the Tescher
14 Spallina firm -- after the issues with the firm
15 came to light. So we've been slogging through
16 this.

17 But we did file a complaint. We went the next
18 step. So the next step says to you, assume the
19 notaries are invalid, which they aren't invalid;
20 but if they were, all we need to establish these
21 documents is the testimony of any attesting
22 witness. So we put on the testimony of an
23 attesting witness, Mr. Spallina. He testified to
24 the preparation of the documents. And I do think
25 it's relevant and it will give the Court comfort in

1 making findings of fact that there was an extensive
2 set of meetings between Mr. Spallina and his
3 clients when they did the documents.

4 I mean, we documented for the first set of
5 documents, you know, four meetings, a letter with
6 some drafts, then a meeting to sign the documents,
7 some phone calls and some amending the documents.
8 And in 2012, we've documented at least one meeting
9 with notes involving Simon; telephone conferences
10 between Simon and his client; eventually, when a
11 decision was made, a conference call of all the
12 children; drafts of the documents sent; the
13 document being executed.

14 And so I think if you look at the evidence,
15 the totality of the evidence, there's nothing to
16 suggest that these five documents do not reflect
17 the true intent of Simon and Shirley Bernstein.
18 There's nothing to suggest that they weren't
19 prepared by the law firm; that they weren't signed
20 by the people that purport to sign them; that
21 undisputed testimony from an attesting witness was
22 that all three people were present, and it was
23 signed by the testator and the two witnesses in the
24 presence of each other.

25 So under either scenario, you get the document

1 admitted. In fact, the documents are in evidence.
2 They've been admitted to probate. But the
3 testimony under 732.502, 503, the testimony of the
4 drafting attorney, who attested -- who was an
5 attesting witness, is sufficient for these
6 documents.

7 There's absolutely no evidence put on the
8 Court that Simon Bernstein lacked mental capacity.
9 In fact, the evidence is directly to the contrary.
10 Every witness testified that he was mentally sharp;
11 making intelligent decisions; having a conference
12 call with his children to explain his wishes. And
13 there's simply no evidence in the record to
14 determine that he lacked testamentary capacity.

15 So if I have Mr. Bernstein, Simon Bernstein,
16 with testamentary capacity signing documents in the
17 presence of two subscribing witnesses, the 2012
18 documents should be upheld. I don't know if
19 there's a question at all even about Shirley
20 Bernstein's 2008 document, but the testimony is
21 undisputed that the documents were consistent with
22 her wishes. You saw a draft letter that explained
23 to her exactly what was happening. She signed the
24 documents. The self-proving affidavits for the
25 Shirley documents are all checked perfectly. And

1 even if they weren't, we have an attesting witness
2 here.

3 And, frankly, I think Eliot Bernstein likes
4 these documents. And all he wants to do is argue
5 what they mean and how much money you get from
6 them. And we didn't really need to spend a day
7 arguing this, but we have and we're here. And we
8 believe that the evidence conclusively demonstrates
9 that these documents are valid.

10 Now, you've heard some nonsense and some
11 shenanigans. There were a couple of problems in
12 the case; one with the notarization of documents.
13 And it's sort of a sad and tortured story, but
14 it's -- it was clearly wrong for someone to send
15 documents into Judge Colin's courtroom that had
16 been altered. The correct documents were submitted
17 and the estate should have been closed.

18 And when the documents were returned, someone
19 should have gone and filed a motion with Judge
20 Colin to accept the un-notarized documents, since
21 there was no dispute they were signed. And we
22 wouldn't be here. But for whatever reason, that
23 happened. And it's unfortunate that happened, but
24 there's no evidence that Ted Bernstein, either of
25 his sisters, or Eliot Bernstein, or any of the

1 grandchildren played any role in the fabrication of
2 that document -- the false notarization.

3 The fabricated amendment to Shirley's trust
4 document is a very disturbing fact, and we took
5 immediate action to correct it. No one's purported
6 to validate that document. We filed an action to
7 have the Court construe the documents, tell us
8 which are valid, tell us what they mean. And
9 that's where we should be focusing our time on.
10 And this is, in my view, step one toward that.

11 But if you look at the evidence we've
12 presented, if you -- I understand you've got to
13 deal with the witnesses that you're handed. And I
14 think Mr. Spallina's testimony, notwithstanding the
15 two issues that we addressed, was persuasive, it
16 was un rebutted.

17 And we would ask that you uphold the five
18 documents and determine, as we have pled, that the
19 five testamentary documents that are in evidence, I
20 believe, as 1, 2, 3, 4, and 5 be upheld and
21 determined to be the valid and final testamentary
22 documents of Simon and Shirley Bernstein. To the
23 extent there's any question the document that has
24 been admitted to be not genuine be determined to be
25 an inoperative and un genuine document, we would ask

1 that you enter judgment for us on Count II and
2 reserve jurisdiction to deal with the rest of the
3 issues as swiftly as we can.

4 THE COURT: All right. Thank you.

5 Any closing argument from the other side?

6 Okay.

7 I keep forgetting that you've got a right to
8 be heard, so please forgive me.

9 MR. MORRISSEY: Judge, if I may approach, I
10 have some case law and statutes that I may refer
11 to. And I'll try to be brief and not cumulative.

12 MR. BERNSTEIN: Could I get the other case law
13 that was submitted? Do you have a copy of that?

14 MR. ROSE: Sure.

15 MR. MORRISSEY: Judge, the relevant statute
16 with respect to the execution of wills is 732.502.
17 It says that every will must be in writing and
18 executed as follows. And I'll just recite from the
19 relevant parts, that is to say relevant with
20 respect to our case.

21 The testator must sign at the end of the will
22 and it must be in the presence of at least two
23 attesting witnesses. And if we drop down to
24 Subsection C, the attesting witnesses must sign the
25 will in the presence of the testator and in the

1 presence of each other.

2 Judge, that was established and uncontroverted
3 in connection with Mr. Spallina's testimony. So
4 732.502 was complied with.

5 Now, I think that we -- there was kind of a
6 distraction with respect to the self-proving
7 affidavits at the end. As Your Honor's aware, a
8 self-proving affidavit is of no consequence in
9 connection with the execution of a will. Execution
10 of a will as dealt with in 732.502 merely requires
11 execution at the end by the testator or the
12 testatrix, and then two witnesses who go ahead and
13 attest as to the testator's signature.

14 Now, the self-proving affidavit at the end is
15 in addition to. So the fact that there may or may
16 not have been a proper notarization is of no
17 consequence in connection with a determination of
18 the validity of any of these documents. So that's
19 number one.

20 Number two, I've also provided Your Honor with
21 another -- a statutory section, 733.107, and it's
22 titled "The Burden of Proof in Contest." And it
23 says there, in Subsection 1, "In all proceedings
24 contesting the validity of a will, the burden shall
25 be upon the proponent of the will to establish,

1 prima facie, its formal execution and attestation."

2 I would submit to the Court that that was done
3 today. We had Mr. Spallina's testimony, which was
4 uncontroverted, that indicated that 732.502 was
5 complied with. The statute goes on to state, "A
6 self-proving affidavit executed in accordance with
7 733.502 or an oath of an attesting witness executed
8 as required under the statutes is admissible and
9 establishes, prima facie, the formal execution and
10 attestation of the will."

11 So, once again, I would submit to the Court
12 that there were self-proving affidavits with
13 respect to all of these testamentary documents.
14 They were proper in form, and therefore comply or
15 comport with the second sentence of the statute.
16 But even if not, we had Mr. Spallina testify today
17 so as to comply with this second sentence of
18 Subsection 1.

19 So if we drop down to the third sentence of
20 this Subsection 1, it says that, "Thereafter, the
21 contestant shall have the burden of establishing
22 the grounds on which probate of the will is opposed
23 or revocation is sought."

24 That was not done today by Mr. Eliot
25 Bernstein. He did not present any evidence or meet

1 any burden to overturn these valid wills.

2 Judge, there is the competency argument. The
3 testamentary competency, I'm now going to quote
4 from In Re Wilmott's Estate, 66 So.2d 465. "A
5 testamentary competency means the ability to
6 understand generally the nature and extent of one's
7 property, the relationship of those who would be
8 the natural objects of the testator's bounty, and
9 the practical effect of the will."

10 The only testimony, I elicited that from
11 Mr. Spallina. His is the only testimony that we
12 have in this regard. And it's uncontroverted that
13 both of these decedents met those very specific
14 criteria which -- with respect to each and every
15 one of the five documents that are submitted for
16 your Court's validation today.

17 There's also case law, In Re Estate of Weihe,
18 W-E-I-H-E. That's 268 So.2d 446. That's a Fourth
19 DCA case that says, "Competency is generally
20 presumed and the burden of proving incompetency is
21 on the contestant." So even if we didn't have
22 Mr. Spallina's testimony today, which I elicited,
23 competency on the part of both Shirley and Si
24 Bernstein would be presumed. And it would be the
25 contestant, Mr. Eliot Bernstein, who would have to

1 come up with the -- or would have the burden of
2 showing that they were incompetent. He presented
3 no evidence today in that regard or in that
4 respect.

5 Lastly, there's the In Re Carnegie's estate,
6 153 Florida 7. It's a 1943 case. That says that
7 testamentary capacity refers to competency at the
8 time that the will was executed, so on that date.

9 The only testimony we have with respect to any
10 issues of competency on the date -- on the specific
11 dates that these testamentary documents were signed
12 was from Mr. Spallina. And on all such dates and
13 times, Mr. Spallina testified that these requisites
14 with respect to competency -- or testamentary
15 competency were met.

16 Finally, Judge, undue influence, that would be
17 a reason for invalidating a will. Mr. Bernstein,
18 once again, did not present any evidence to go
19 ahead and suggest that these wills or trusts
20 documents should be overturned on the grounds of
21 undue influence. And in that regard, I provided
22 Your Honor with the Estate of Carpenter, 253 So.2d
23 697. To prove undue influence, one must
24 demonstrate that a beneficiary had a confidential
25 relationship with the decedent and actively

1 procured the will or trust.

2 Mr. Eliot Bernstein did not even suggest today
3 that any of the beneficiaries actively procured the
4 document. Why? Beneficiaries are essentially --
5 are ultimately the ten grandchildren.

6 Mr. Bernstein, Eliot Bernstein, did not suggest
7 today that any one of the ten grandchildren, who
8 are ultimately beneficiaries, were active in
9 procuring any of the five documents, nor did
10 Mr. Bernstein submit to the Court any evidence of
11 confidential relationship by anyone in connection
12 with the various criteria to raise the presumption
13 of undue influence, nor did Eliot Bernstein raise
14 the presumption by satisfying any or enough of the
15 criteria under the Carpenter case to go ahead and
16 raise the presumption that anyone, any substantial
17 beneficiary, had committed undue influence with
18 respect to any of these documents.

19 For those various, multifarious reasons,
20 Judge, I would submit to the Court that these
21 documents are valid and should be held as such.

22 THE COURT: All right. Thank you.

23 Any closing from the defendant's side?

24 MR. BERNSTEIN: Oh, yeah.

25 THE COURT: You've got eight minutes

1 remaining.

2 MR. BERNSTEIN: Okay. Your Honor, we're
3 really here today because of a complex fraud on the
4 court and on beneficiaries like myself and my
5 children. The only witness they procured to
6 validate these documents has consented to the SEC
7 and felony charges recently with his partner for
8 insider trading. He came up on the stand and
9 admitted that he committed fraud, and that his law
10 firm forged documents and frauded documents, and
11 then submitted them not only to the court, but
12 beneficiaries' attorneys as part of a very complex
13 fraud to not only change beneficiaries, but to
14 seize dominion and control of the estates through
15 these very contestable documents.

16 They've been shown by the governor's office to
17 not be properly notarized. The two people who are
18 going -- well, one is --

19 MR. ROSE: I don't want to object to --

20 MR. BERNSTEIN: -- has no --

21 MR. ROSE: Can I object? He's so far talking
22 about things that aren't in evidence.

23 THE COURT: Sustained.

24 You can only argue those things that were
25 received in evidence.

1 MR. ROSE: And I realize Your Honor has a good
2 memory of the evidence --

3 MR. BERNSTEIN: I put in evidence that
4 Mr. Spallina was SEC --

5 THE COURT: No, I sustained objections to
6 those questions.

7 MR. BERNSTEIN: Oh, okay.

8 THE COURT: You can only argue those things
9 that came into evidence.

10 MR. BERNSTEIN: Okay. They didn't bring in
11 any of the necessary parties to validate these
12 documents, other than Mr. Spallina, who admitted to
13 the Court today that he fraudulently altered the
14 trust document. Can I now say that?

15 THE COURT: It's not good for you to ask me
16 questions. I've got to rule on objections, and I'm
17 trying to give you some guidance so that you don't
18 screw up. But I can't answer your legal questions.

19 MR. BERNSTEIN: Okay. So the only witness has
20 admitted in this very case that his law firm
21 submitted forged and fraudulent documents to the
22 Court already in this case; that he himself did
23 those frauds. And we're relying on his sole
24 testimony.

25 None of the other people who signed these

1 documents are here today to validate or even
2 confirm his statements. So it's a highly
3 uncredible [sic] witness to the documents,
4 especially when Mr. Spallina drafted, signed as a
5 witness, gained interest in the documents himself
6 personally as a trustee, and seems to clearly have
7 then taken it upon himself to mislead beneficiaries
8 as to the actual documents.

9 I have asked for production of these
10 documents. Today there were no originals produced
11 to this Court for you to examine.

12 And more importantly, there's a few last
13 things I wanted to state to the Court. My children
14 are not represented here today as beneficiaries.
15 They were supposed to be represented by a trustee
16 of a trust that does not exist in our possession.
17 So they were -- I was sued as a trustee of a trust
18 I've never been given to represent my children, who
19 are alleged beneficiaries by these guys. And the
20 estate's done nothing to provide counsel to three
21 minor children, and left them here today without
22 counsel, and me as a trustee of a trust that
23 doesn't exist, as far as we know. I've never
24 signed it. They haven't submitted it to the Court,
25 to anybody.

1 I want to bring up Rule 1.20, pretrial
2 procedure, case management conference process
3 provides, "The matter to be considered shall be
4 specified in the order of notice setting the
5 conference."

6 So I just want to say that we had a status
7 conference in Simon Bernstein's estate, and only
8 Simon Bernstein's estate, and that this trial was
9 scheduled in Simon's status conference, which
10 violates that very rule. So this trial, in my
11 view, was conducted improperly.

12 Like I said, if you look at the hearing
13 transcript of that day, you'll see that Mr. Rose
14 misleads the Court to think that all these cases
15 were noticed up that day. But Mr. O'Connell, the
16 PR, had only noticed it up for Simon's estate. So
17 what I'm doing here at a trial in Shirley's trust
18 violates Rule 1.20.

19 There are some other things that are violated
20 and not -- I believe we didn't get to discuss
21 the -- at the case management, the fact that, you
22 know -- and I did try to get this out -- that we
23 would need a lot more time for a competency
24 hearing, for a removal of Ted process, which should
25 have come first before doing this and letting them

1 argue, where it's been alleged that there's some
2 serious problems with Ted Bernstein's
3 representation, including the fact that the PR of
4 the estate of Simon has filed with this Court
5 notice that he's not a valid trustee.

6 MR. ROSE: Objection. Outside -- not in
7 evidence.

8 THE COURT: Okay. If you're not going to
9 argue the facts that are in evidence in this trial,
10 then I'm going to ask you to stop.

11 MR. BERNSTEIN: Okay. Well, I'll keep going
12 on my -- see, that's what's confusing. What trial?
13 We had a case management. I was prepared for a
14 Simon, where I have Simon trust construction, all
15 those things ready, and I didn't come with any
16 notes about Shirley. And I've tried to notice the
17 Court that under 1.200, this trial was scheduled
18 improperly in the estate of Simon, and should have
19 been reheard or rescheduled or something.

20 But that seems not to matter. It doesn't
21 matter that we follow the rules. I follow the
22 rules, but it seems that the other side doesn't
23 follow any of the rules; doesn't submit documents
24 properly to courts; commits frauds on courts; and
25 then wants you to believe the validity of these

1 documents based on a felony statement to the Court,
2 who's under a consent with the SEC.

3 THE COURT: You've got two minutes remaining.

4 MR. BERNSTEIN: There were outstanding
5 discovery requests. I was denied all these
6 documents. I was denied the trust that I'm sued
7 under representing my children. So I can't get any
8 of those documents. We would have brought all that
9 up at a real status conference had it been a real
10 status conference and not a corralling or, as you
11 called it, a wrangling of octopuses.

12 THE COURT: That's vivid imagery. Isn't it?
13 I pride myself on that one.

14 MR. BERNSTEIN: Oh, yeah. Well, I was
15 wrangled, technically, into the wrong case here
16 today, in a status conference that you should have
17 corrected upon learning about this. And Mr. Rose
18 has been aware of his mistake in misleading the
19 Court that all these cases were noticed up, when
20 they weren't. And he didn't come to the Court to
21 correct it. Kind of like they didn't come to the
22 Court to correct the validity of these documents
23 before acting under them, knowing they needed to be
24 not only challenged on validity, but on
25 construction of terms, which will come next, which

1 is going to just go right back into the same circle
2 of fraud.

3 So their star witness is a felon. Their star
4 witness has committed fraud upon this Court in this
5 case. That's who they're relying on, and hoping
6 you bank on his words to validate documents.

7 I, Your Honor, am asking that you don't
8 validate the documents; that we move forward to
9 have the documents properly forensically analyzed.
10 They were the subject of ongoing criminal
11 investigations, which are just getting kicked off.
12 In fact, I got 7200 documents from Mr. Spallina,
13 where almost, I think, 7200 are fraud.

14 THE COURT: Your time is more than elapsed. I
15 was letting you finish up as a courtesy, but you're
16 getting off into things that aren't in evidence --

17 MR. BERNSTEIN: Okay. Well, I don't think the
18 trial was conducted fairly. I think that my due
19 process rights have been denied under the law.

20 THE COURT: Your time is more than up. Thank
21 you.

22 MR. BERNSTEIN: Okay.

23 THE COURT: Is there any rebuttal?

24 MR. BERNSTEIN: And I still would like to move
25 for your disqualification, on the record.

1 THE COURT: On the record doesn't count.
2 You've got to put it in writing.

3 MR. BERNSTEIN: Are you sure? I thought I saw
4 in the rules --

5 THE COURT: I'll tell you what. You proceed
6 under your understanding of the law and the rules.
7 That's fine.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Before I take this --

10 MR. BERNSTEIN: I rest.

11 THE COURT: -- before I take this rebuttal
12 argument, I'll let you put your request for recusal
13 in writing. We'll be out of session five minutes.

14 Is that something you want me to read?

15 MR. ROSE: I just want to make my final --

16 THE COURT: I just want to make sure that
17 there's been no possibility that this gentleman
18 won't have his moment to shine.

19 So go ahead and go put that in writing, sir.
20 Be back in five minutes.

21 (A break was taken.)

22 THE COURT: Did you get that written down?

23 MR. BERNSTEIN: Can I approach?

24 THE COURT: Sure. All approaches are okay.

25 MR. BERNSTEIN: Do you want to wait for

1 everybody?

2 THE COURT: Do you have something that you
3 wanted to file, a written motion to recuse?

4 MR. BERNSTEIN: Yeah. In freestyle.

5 THE COURT: All right. I'll take a look at
6 it. Thank you.

7 MR. BERNSTEIN: Can I ask a question?

8 THE COURT: I'll be in recess. I'll take a
9 look at this written motion. Thank you. It'll
10 take me just a minute. Don't anybody go away.

11 (A break was taken.)

12 THE COURT: The stack of documents handed up
13 to me by the defendant are duplicates of documents
14 that he filed, it looks like, twice with the clerk
15 on December 4th, and they've already been ruled
16 upon by me. But I am also ruling today by
17 handwritten order on the face of one of the
18 documents that the disqualification motion is
19 denied as legally insufficient; already ruled upon
20 in the order of 12/8/15, at Docket Entry No. 98;
21 identical to motions filed by defendant on
22 12/4/2015 at Docket Entries Nos. 94 and 98; done in
23 order of John Phillips, 12/15/15. And since I have
24 skills, I made copies of my handwritten order for
25 everybody.

1 Gary, if you could, just hand these out.

2 That'll take care of all that.

3 Now we can go back to talking about the case.

4 I was going to take the rebuttal argument from
5 Plaintiff's side. I'd take that now.

6 MR. ROSE: I have just the exhibits that we
7 put in evidence on the plaintiff's side, if that's
8 easier for the Court.

9 THE COURT: That would be much easier. Thank
10 you.

11 MR. ROSE: And I have a proposed final
12 judgment. And I wanted to talk about one paragraph
13 of the final judgment in particular.

14 MR. BERNSTEIN: I haven't had time to review
15 any final judgment or anything.

16 THE COURT: You're interrupting the argument.
17 Thank you.

18 MR. ROSE: So the complaint alleges -- and I
19 realize we didn't cover every issue in the entire
20 case, but we do it within the four corners of Count
21 II of the complaint. Count II of the complaint was
22 stated in paragraph 79 through 88 of the complaint.

23 And the answer that's filed in this case on
24 Count II at paragraph 80 alleges that there's been
25 a fraud on the court by Ted Bernstein, including,

1 but not limited to, proven forgery, fraudulent
2 notarizations, fraud on the court, altercation
3 [sic] of trust documents, et cetera, et cetera.

4 And in paragraph 82, the answer says that Ted
5 should be removed for his ongoing involvement in
6 fraud which is dealing with these documents.

7 Ted Bernstein is serving as a fiduciary.
8 You've heard -- that was the defense to this case.
9 That's stated in the complaint. You heard no
10 evidence that Ted Bernstein was involved in the
11 preparation or creation of any fraudulent
12 documents. In fact, the evidence from Mr. Spallina
13 was to the contrary.

14 So our final judgment in paragraph 5 asks the
15 Court to make a ruling on the issues that are pled
16 in the answer, specifically that there was no
17 evidence that Ted was involved and that the
18 evidence was to the contrary.

19 So we have no rebuttal. We believe we've
20 established our case, and we proposed a final
21 judgment for Your Honor's consideration that
22 discusses that this is an action to adjudicate five
23 documents to be the testamentary documents. Based
24 on the evidence presented, they're genuine,
25 authentic, valid and enforceable; has the requisite

1 findings. Paragraph 5, which I've explained, the
2 reason we believe it's appropriate in the final
3 judgment, given the pleadings that were made and
4 the lack of evidence on those pleadings. And we
5 didn't get into it today, but --

6 THE COURT: Well, if we didn't get into it
7 today, then it's not proper for argument.

8 MR. ROSE: Well, it's alleged in the complaint
9 and not proven, so I think it's appropriate to make
10 a finding on it. You didn't actually hear
11 testimony that was relevant to those issues about
12 Ted Bernstein. And I would ask you to consider
13 that 5 is supported by the evidence and the
14 pleadings.

15 And 6, we would like you to declare the
16 unauthorized one invalid, because it does change
17 potentially something, and we want to know what
18 we're doing going forward. And I don't think
19 anyone disputes that Exhibit 6 that's in evidence
20 was not valid. And then it just states this is
21 intended to be a final order under the rules of
22 probate code.

23 So that's our order. We would ask you to
24 enter our judgment or a judgment similar to it;
25 find in favor of the plaintiff; reserve

1 jurisdiction for numerous other matters that we
2 need to deal with as quickly as we can. But,
3 hopefully, with the guidance we get today, we'll be
4 able to do it more quickly and more efficiently.
5 So thank you.

6 THE COURT: All right. Thanks.

7 We'll be in recess. It was fun spending time
8 with you all.

9 Sir, do you have any proposed final judgment
10 you want me to consider? I've received one from
11 the plaintiff's side. Is there some from the
12 defendant's side?

13 MR. BERNSTEIN: No. I haven't received one
14 from them. And seeing theirs --

15 THE COURT: Okay. Thank you.

16 Then we'll be in recess. Thank you all very
17 much. I'll get this order out as quickly as I can.

18 (At 4:48 p.m. the trial was concluded.)
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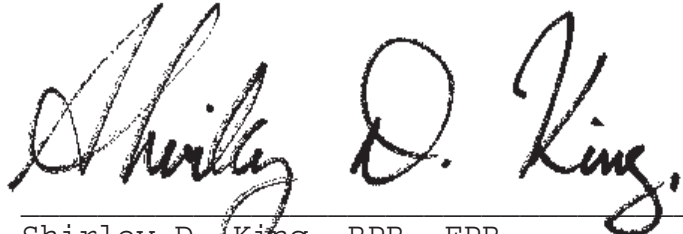
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.


Shirley D. King, RPR, FPR

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION
CASE NO. 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner,

vs.

TESCHER & SPALLINA, P.A., (and all
parties, associates and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN
(as alleged personal representative, trustee,
successor trustee) (both personally and
professionally); et al.,

Respondents.

- - -
PROCEEDINGS BEFORE THE
HONORABLE MARTIN H. COLIN
VOLUME II
- - -

DATE: FEBRUARY 19, 2014

TIME: 2:30 P.M. - 5:03 P.M.

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 ALSO PRESENT:
 Ted S. Bernstein
 William Stansbury
 Candice Bernstein

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1 BE IT REMEMBERED, that the following
 2 proceedings were taken in the above-styled cause
 3 before Judge Martin H. Colin, at the South County
 4 Courthouse, 200 West Atlantic Avenue, Courtroom 2,
 5 City of Delray Beach, County of Palm Beach, State of
 6 Florida, beginning at 2:30, on Wednesday, the 19th
 7 day of February, 2014, to wit:
 8 ---
 9 THE COURT: Okay. Thanks. Be seated.
 10 Okay. So we're back on the Estate of
 11 Simon Bernstein, 2012CP004391. Let the record
 12 reflect counsel is present following
 13 yesterday's hearing and Mr. Feaman has now
 14 filed the verified motion to disqualify counsel
 15 which we're going to first hear.
 16 So Mr. Feaman, you're up.
 17 MR. FEAMAN: Thank you, Your Honor.
 18 MR. PANKAUSKI: Excuse me, Your Honor.
 19 Because I have not been able to provide a written
 20 response and because you were kind enough to give
 21 Mr. Feaman an opening statement yesterday, may I
 22 be briefly heard?
 23 THE COURT: Well, hold on. Let him give his
 24 opening statement and then you.
 25 Go ahead.

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1 MR. FEAMAN: Thank you, Your Honor.
 2 Your Honor, we're traveling, as Your Honor
 3 is aware, under Rule 4-1.18 of the Rules of
 4 Professional Conduct dealing with prospective
 5 clients, which states that a person who
 6 discusses with a lawyer the possibility of
 7 forming a client-lawyer relationship with
 8 respect to a matter is a prospective client, at
 9 subpart (a). And then subpart (c), Your Honor,
 10 a lawyer subject to subdivision (b) shall not
 11 represent a client with an interest materially
 12 adverse to those of a prospective client in the
 13 same or substantially related matter.
 14 In this case, Your Honor, we have filed
 15 our verified motion to disqualify counsel as
 16 opposing counsel to Mr. Bernstein in this
 17 proceeding, which we do have a right to do.
 18 And in that verified motion it sets forth that
 19 there was indeed a relationship formed between
 20 Mr. Pankauski and the Bernsteins as
 21 prospective -- specifically Eliot Bernstein --
 22 as a prospective client.
 23 The law, Your Honor, as you know, states
 24 that, under Florida law, attorneys must avoid
 25 appearances of professional impropriety and any

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1 doubt is to be resolved in favor of
 2 disqualifications.
 3 We respectively submit that based upon the
 4 papers submitted that, in fact, the
 5 relationship as prospective counsel was -- and
 6 prospective client -- was formed. We attach as
 7 Exhibit A to the motion an e-mail which, in
 8 fact, memorializes the existence of the
 9 relationship. And we would then respectfully
 10 request, through our motion, that there be a
 11 disqualification in this case. I don't know
 12 what opposing counsel's arguments are going to
 13 be, so I will reserve after I hear.
 14 THE COURT: Okay. Mr. Pankauski.
 15 MR. PANKAUSKI: Thank you, Your Honor. Good
 16 afternoon. So we're here today -- and I'm going
 17 to try to be concise with my opening statements --
 18 what I'm going to try to do is talk about the
 19 burden of proof, the standards which I believe are
 20 to exist under 4-1.18, because I don't see any
 21 published decisions on this rule. I know our rule
 22 in Florida is a little bit different than the
 23 model rules that the ABA has. I'm also going to
 24 try to concisely tell you what the evidence is
 25 going to show.

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1 And then, in closing, I'd just like to
 2 address three points made by opposing counsel.
 3 And thank you for this opportunity to be heard.
 4 This is a tire kicker case. This is a case
 5 that the litigators, trial attorneys, who get
 6 lots of calls from prospective clients would
 7 refer to as, you know, what happens when
 8 somebody calls up a number of attorneys and
 9 says, hey, would you take my case, and
 10 confidential information is not relayed, and
 11 then that attorney ends up being involved in a
 12 case. Should an attorney be removed from a
 13 case -- in a tire kicking case -- because
 14 somebody is calling up and kicking the tires,
 15 should Your Honor, which you have the absolute
 16 discretion to do, impose your discretion to
 17 prohibit Mr. Ted Bernstein from having the
 18 counsel of his choice. So let me say at the
 19 beginning that Mr. Stansbury's counsel said
 20 that he has a right to file a motion to
 21 disqualify my firm. We contest that, Your
 22 Honor. That's not accurate. A third party,
 23 such as a creditor like Mr. Stansbury, does not
 24 have standing to determine whether Mr. Ted
 25 Bernstein can hire someone as his or her

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1 attorney.
 2 THE COURT: Okay. So stop for a second. I
 3 just want to make sure I'm looking at something --
 4 because I agree time was quick on this. So in the
 5 packet that I received, the verified motion to
 6 disqualify counsel, it's brought by the
 7 petitioner, William Stansbury, as a creditor, an
 8 interested person in the estate, and it's -- it's
 9 verified by Eliot Bernstein and Candice Bernstein.
 10 But it's not brought by them. It's brought only
 11 by William. So -- and William doesn't verify it.
 12 So the moving party doesn't verify the pleading.
 13 So under the rule that governs these type of
 14 pleadings who has to -- two questions -- who has
 15 to verify the motion; and does the motion have to
 16 be brought by and/or in behalf of the alleged
 17 aggrieved individual?
 18 MR. FEAMAN: Thank you, Your Honor. First
 19 with regard to the verification. The verification
 20 has to state that I declare that the facts alleged
 21 are true. And Mr. Stansbury was not in a position
 22 to verify that because it would have been through
 23 secondhand information. So we thought that the
 24 proper verification should be signed by the people
 25 who actually are the prospective clients against

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1 whom we say --
 2 THE COURT: Now, I mean, they may be -- that
 3 is Eliot and Candice -- may be witnesses. But
 4 from the motion itself, the moving party is
 5 William. Eliot has not filed a motion. And so --
 6 I didn't know this until I saw the pleading -- so
 7 William has filed a motion. He is seeking to
 8 disqualify Mr. Pankauski from representing Ted
 9 Bernstein. Eliot has not filed any action on
 10 that. Has made no request for such a
 11 disqualification. And William hasn't even signed
 12 the pleading that he filed. So let me take a look
 13 at the rule for a second.
 14 MR. FEAMAN: Sure. I also have case law with
 15 regard to whether William can bring it as opposing
 16 counsel.
 17 THE COURT: As opposing party?
 18 MR. FEAMAN: As opposing party, yes, sir.
 19 THE COURT: Okay. So -- I mean, correct me
 20 if I'm wrong, the rule that is both 4-1.8 and
 21 4-1.9 are rules of professional conduct that
 22 advise about what lawyers can do under
 23 circumstances that may be involved here. But it
 24 doesn't really speak to the remedy. Both of you
 25 agree with that?

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1 MR. PANKAUSKI: Yes, Your Honor.
 2 THE COURT: So either of you have cases that
 3 speak to the issues of whether William, as the
 4 creditor, not as the purported client, who has an
 5 alleged conflict of interest with Mr. Pankauski,
 6 can bring this action. And secondly, whether --
 7 whether I can disqualify Mr. Pankauski without
 8 Eliot seeking that to happen, and by William as a
 9 creditor, interested person seeking that, and
 10 whether I can do it based upon a verified motion
 11 not signed by William. Those are the three issues
 12 I see on the surface.
 13 MR. PANKAUSKI: Yes, Your Honor.
 14 THE COURT: You want to address that first?
 15 MR. FEAMAN: Sure. I have the burden, so
 16 I'll go first. First, I know there is a rule that
 17 when you seek to disqualify a judge, that it must
 18 be verified.
 19 THE COURT: Right. But the -- and in that
 20 area, the rule speaks out the procedure.
 21 MR. FEAMAN: Right.
 22 THE COURT: Here, the procedure in the Bar
 23 Lawyer's Rules of Professional Conduct, it doesn't
 24 speak to it. So I assume the case law speaks to
 25 it.

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1 MR. FEAMAN: To my knowledge, the rules are
 2 silent as to the procedure.
 3 THE COURT: So what does the case law say the
 4 procedure is?
 5 MR. FEAMAN: We don't have a case law as to
 6 the procedure. We have it verified to show that
 7 these are true facts on their face being brought
 8 before the court. We didn't find a case that sets
 9 forth the procedure of how this is brought, other
 10 than this should be an evidentiary hearing.
 11 THE COURT: Okay.
 12 MR. FEAMAN: Now, with regard to
 13 Mr. Stansbury bringing -- being the moving party
 14 instead of Mr. Eliot Bernstein. We attached the
 15 case to our motion, which was the Smathers case
 16 which --
 17 THE COURT: Brent versus Smathers?
 18 MR. FEAMAN: Brent versus Smathers, yes, Your
 19 Honor, 529 So. 2d. 1267. And on Page 2 of that
 20 decision, Page 2 as copied to you, there is a
 21 discussion of Rule 4-1.9. And then at the bottom
 22 of the left-hand column, the last sentence, it
 23 says as to the law firm's second argument, the
 24 comments to Rule 4-1.7 states that: Although
 25 questions involving conflicts of interest are

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1 primarily the responsibility of the lawyer
 2 undertaking the representation, opposing counsel
 3 may properly raise the issue, as is the case here.
 4 That's the authority that we're relying
 5 upon that we can bring it on behalf of
 6 Mr. Stansbury.
 7 THE COURT: So in this Brent case -- let me
 8 see who is who. Want to be heard on that matter,
 9 Mr. Pankauski?
 10 MR. PANKAUSKI: Yes, Your Honor. Thank you.
 11 The Brent v. Smathers case is outdated. It's a
 12 1988 case. That pre-dates the 2009 change to
 13 Florida Rule 4-1.18. It also is traveling under
 14 the wrong rule of professional conduct. 4-1.9 is
 15 not applicable here. We both agree it's 4-1.18
 16 dealing with a prospective client. The standards
 17 are different for a prospective client than an
 18 existing attorney-client relationship.
 19 THE COURT: Okay. Let me -- okay. Let me
 20 just look at that for one second. For that to be
 21 true, Mr. Feaman, it would have to be the position
 22 by Eliot, through the evidence, or Eliot
 23 Bernstein, that there was no lawyer-client
 24 relationship between him and Mr. Pankauski. Is
 25 that the case?

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1 MR. FEAMAN: Was he formerly retained, is
 2 that your question?
 3 THE COURT: You're using the word formal, I'm
 4 not.
 5 MR. FEAMAN: All right.
 6 THE COURT: The cases don't use the word
 7 formal.
 8 MR. FEAMAN: As defined by the rules, he's a
 9 prospective client. The rules make a distinction.
 10 MR. PANKAUSKI: That's 4-1.18.
 11 THE COURT: So you don't think Rule 4-1.9
 12 applies?
 13 MR. FEAMAN: I do. Because it references
 14 4-1.9 in part B of 4-1.18, which states that even
 15 when no client-lawyer relationship ensues, a
 16 lawyer who has had discussions with a prospective
 17 client shall not use or reveal information learned
 18 in the consultation, except as Rule 4-1.9 would
 19 permit. And so a conflict under 4-1.9 would apply
 20 to a prospective client as defined under 4-1.18.
 21 THE COURT: Okay. All right. What about --
 22 Mr. Pankauski, what's your position on whether
 23 this could be brought by the creditor and not by
 24 Eliot Bernstein.
 25 MR. PANKAUSKI: He's not permitted -- the

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1 creditor is not permitted to bring this action.
 2 The authority for that -- let me state what the
 3 authority is. Privity is required for someone to
 4 try to go up to an attorney and say you can't
 5 represent Ted Bernstein. There is no privity
 6 here. There is no attorney-client relationship
 7 between my firm and the creditor, Mr. Stansbury.
 8 The authority for that is a 2012 Second District
 9 case called THI Holdings, Thomas Howard Indigo
 10 Holdings, LLC. And it sets forth that privity is
 11 required. It involved a motion to disqualify, a
 12 motion for pro hac vice. And it says here as a
 13 matter of undisputed facts, there is no privity
 14 between the estate and Balassa or his firm. And
 15 it goes on to talk about that. And then it says
 16 even if the estate could convince this court that
 17 it had standing to raise the disqualification
 18 issue, it cannot establish the legal requirements
 19 for disqualification.
 20 THE COURT: So here's the thing that's
 21 concerning me, Mr. Feaman. The allegation,
 22 looking at the motion, is that there was -- I'm
 23 using this expression broadly -- some legal
 24 dealings between Eliot Bernstein and the Pankauski
 25 firm. That's what you allege, correct?

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1 MR. FEAMAN: Correct.
 2 THE COURT: So -- and Eliot Bernstein has
 3 not -- and then we also know that Ted Bernstein
 4 has hired Mr. Pankauski, that same lawyer that
 5 Eliot says he had legal dealings with. True?
 6 MR. FEAMAN: True.
 7 THE COURT: So here's what I'm just not
 8 following you -- almost like a matter of logic.
 9 With Eliot not complaining, how can a creditor or
 10 any other outside person who doesn't claim a
 11 conflict of interest -- say I don't want
 12 Mr. Pankauski to continue to represent Ted when
 13 Eliot has not filed the motion complaining because
 14 Eliot is the other purported either prospective or
 15 former client, depending upon which rule you look
 16 at -- who has a right to either complain or not.
 17 So I'm sure it's not the case in reality, but if
 18 Eliot didn't complain -- I mean, it could be that
 19 Eliot is taking a position, you know, whatever I
 20 did with Mr. Pankauski and his firm, you know, it
 21 started where it started, ended where it ended,
 22 and, you know, it may be that Ted hired him and
 23 that's okay with me. And I'm not asking that
 24 Mr. Pankauski not represent Ted because of some
 25 conflict with me, Eliot. I don't -- I just don't

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1 understand how William Stansbury can say there is
 2 a conflict that Eliot doesn't say exists.
 3 MR. FEAMAN: Mr. Stansbury is harmed as a
 4 result of the apparent dereliction of
 5 Mr. Pankauski's duties to Mr. Eliot Bernstein
 6 because --
 7 THE COURT: Even if Eliot doesn't complain?
 8 MR. FEAMAN: Yes, sir.
 9 THE COURT: Okay. Show me -- I need a case
 10 that says that that's possible. Because that's
 11 what I don't see. Eliot, I think, can complain,
 12 and I'm not sure that it's -- which rule applies.
 13 MR. FEAMAN: And he may yet complain, we
 14 don't know. And I can't --
 15 THE COURT: Right.
 16 MR. FEAMAN: -- speak for Eliot.
 17 THE COURT: I know. Eliot is representing
 18 himself.
 19 MR. FEAMAN: Nor do I prepare pleadings for
 20 Mr. Bernstein.
 21 THE COURT: Eliot went so far as to sign your
 22 verification, but it's not his motion. That's one
 23 problem. But also -- I'm almost positive because
 24 of some prior cases I had that the person who has
 25 to complain is -- about a lawyer representing

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1 someone else, and in this case it's Mr. Pankauski
 2 continuing to represent Ted Bernstein, is the
 3 person who purportedly is the benefactor of these
 4 rules as an either prospective or former client.
 5 But if he says no -- if he doesn't seek
 6 disqualification, I'm not sure how someone else
 7 can -- has an interest, under the cases that I
 8 read, for that to happen. Let me just look here
 9 if there is a case I just saw in my research.
 10 MR. FEAMAN: The court --
 11 THE COURT: I did an extensive case right on
 12 Rule 4-1.9, very similar to this, and it was --
 13 everyone said it was that rule, not the
 14 prospective rule. Although, from reading your
 15 motion, it's almost the identical type of case.
 16 And both lawyers in that case said, though, that
 17 it was the 4-1.9 that applied not the 4-1.8. But
 18 the moving party was the alleged aggrieved party
 19 who said that they -- that the other lawyer had a
 20 conflict of interest because the other lawyer
 21 here, Mr. Pankauski, had performed some
 22 lawyer-client services, and there was other
 23 information that led to the -- because if there is
 24 no attorney-client relationship that is complained
 25 about that Eliot says was breached, I'm not sure

<p style="text-align: right;">65</p> <p>1 that William has standing. And I just -- I mean, 2 if you have a case that says he does... 3 MR. FEAMAN: Only thing I have is the comment 4 to 4-1.7 -- 5 THE COURT: Okay. 6 MR. FEAMAN: -- which deals with conflicts of 7 interest. 8 THE COURT: Sure. Let me see. 9 MR. FEAMAN: And it's at the end in the 10 book -- I don't know if you have the book. 11 THE COURT: I have the book, yeah. 12 MR. FEAMAN: On Page -- I have the 2013 13 edition. 14 THE COURT: Okay. 15 MR. FEAMAN: Page 1985. 16 THE COURT: Wait a minute. My Rule 4-1.8 the 17 comments are on a different page, but what's the 18 heading of the comment? 19 MR. FEAMAN: Conflict charge by an opposing 20 party. 21 THE COURT: Okay. Got that. Let me read it. 22 MR. FEAMAN: It says, the second sentence, in 23 litigation a court may raise the question when 24 there is reason to infer that the lawyer has 25 neglected the responsibility.</p>	<p style="text-align: right;">67</p> <p>1 can do or not do. That's not what's involved 2 here. So here when -- Eliot was first in time, 3 right? 4 MR. PANKAUSKI: Yes, Your Honor. 5 THE COURT: You agree with that? 6 MR. FEAMAN: Yes. 7 THE COURT: So Eliot sees Mr. Pankauski, or 8 his office does what he does -- we may be talking 9 about that in a few moments. And then the 10 question becomes where Mr. Pankauski then 11 continues to -- or chooses to represent someone 12 else, Ted Bernstein, it looks like Rule 4-1.18, 13 subsection (c) applies. A lawyer subject to 14 subdivision (b) shall not represent a client with 15 interest materially adverse to those of a 16 prospective client in the same or substantially 17 related matter. And it goes on to talk about 18 that. 19 So is that the rule that you say applies? 20 MR. FEAMAN: Yes, Your Honor. 21 THE COURT: You agree that rule would apply? 22 MR. PANKAUSKI: Yes, Your Honor. 23 THE COURT: I think Rule 4-1.9, which is the 24 other conflict of interest rule, is where -- 25 arises where there actually is a situation where</p>
<p style="text-align: right;">66</p> <p>1 THE COURT: Okay. Let me read the entire -- 2 what subsection of 4-1.8 do you say applies, 3 Mr. Feaman? 4 MR. FEAMAN: Well, our motion speaks to 5 4-1.18. 6 THE COURT: Eighteen. Okay. Say that again 7 4 -- 8 MR. FEAMAN: 4-1.18. 9 THE COURT: Let me look at that, it's 10 different. 11 Okay. That's duties to prospective 12 client. Let's read. 13 MR. FEAMAN: Right. 14 THE COURT: Let me read that. 15 MR. FEAMAN: Okay. 16 THE COURT: Let me look at the comments for a 17 second. 18 Okay. So I think there is maybe a little 19 overlap here. If Eliot Bernstein is a 20 prospective client, the way the rule starts, 21 there is a focus about when he purportedly 22 consults with Mr. Pankauski and he's a 23 prospective client, if Mr. Pankauski has some 24 lawyer-client relationship with someone else at 25 the time, then there are rules that say what he</p>	<p style="text-align: right;">68</p> <p>1 Eliot Bernstein is then called a former client, 2 and then Mr. Pankauski would represent Ted. And 3 then subsection (a) there almost uses the exact 4 same language. 5 So I'm not sure if Eliot is a former 6 client or a prospective client, but if he's 7 first in line, then the rule is almost 8 identical about when Mr. Pankauski then can 9 represent Ted Bernstein in the same or 10 related -- substantially related matter. The 11 language is the same, true? 12 MR. PANKAUSKI: Yes, Your Honor. 13 THE COURT: You agree? 14 MR. FEAMAN: True. 15 THE COURT: All right. So let me get passed, 16 though, the procedural aspect as to whether 17 William can bring that without -- William 18 Stansbury -- can bring this complaint in 19 connection with the motion to disqualify when 20 Eliot doesn't. If Eliot is the purported party 21 who is harmed by the potential conflicts of 22 interest, either as a prospective client of 23 Mr. Pankauski or former client, if it got that 24 far. 25 MR. FEAMAN: Our argument, Your Honor, on</p>

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1 behalf of Mr. Stansbury, is that because Eliot
 2 Bernstein's interests are more closely aligned
 3 with Mr. Stansbury's, and are clearly adverse to
 4 Ted Bernstein, and Mr. Stansbury's interests are
 5 clearly adverse to Ted Bernstein, that if Eliot
 6 Bernstein transmitted information as a prospective
 7 client to the attorney who's now Ted Bernstein's
 8 lawyer, and we're adverse to him, it's our
 9 position that we're harmed as a result of that.
 10 THE COURT: Well -- but it's not harm
 11 that's -- the rule is not a harm. The rule is a
 12 conflict of interest. And the conflict of
 13 interest has to be between Eliot and Ted. I'm not
 14 sure how it could be otherwise.
 15 MR. FEAMAN: Yes, as a result of that
 16 conflict of interest --
 17 THE COURT: Well, okay. But I still have
 18 to --
 19 MR. FEAMAN: -- we're hurt.
 20 THE COURT: But if Eliot says -- because
 21 there could be waivers, says here in the rule --
 22 4-1.9 says a lawyer who has formerly represented a
 23 client shall not thereafter represent another
 24 person, okay, unless -- and then there's unleses
 25 [sic] -- and one of those things are clearly in

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1 this case Eliot could not complain about it.
 2 MR. ELIOT BERNSTEIN: May I interject, Your
 3 Honor?
 4 THE COURT: You're objecting?
 5 MR. ELIOT BERNSTEIN: No, can I interject?
 6 THE COURT: What do you want to say?
 7 MR. ELIOT BERNSTEIN: I politely asked him
 8 and told him that he was conflicted, and I felt
 9 harmed by it.
 10 THE COURT: That's evidence, though. That's
 11 potential evidence you want to interject, but you
 12 haven't filed this motion.
 13 MR. ELIOT BERNSTEIN: I didn't learn that
 14 until yesterday, so if I have to, I'll do another
 15 day.
 16 THE COURT: So let me ask this. If -- the
 17 motion is filed, it's in written form, it's filed
 18 by Mr. Stansbury. I think it needs to be joined,
 19 if not independently, at least joined by Eliot
 20 Bernstein. So what's your position -- and that's
 21 clearly what Eliot wants to do, he just doesn't
 22 know it yet. What about that, Mr. Pankauski? Can
 23 I treat this motion and go forward based upon it
 24 being joined by Eliot?
 25 MR. PANKAUSKI: No, Your Honor. Mr. Eliot

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1 Bernstein received notice of that. He's chosen to
 2 go without counsel. He's chosen not to seek any
 3 affirmative relief.
 4 THE COURT: But that -- that's to the case.
 5 But I'm talking about the motion to disqualify
 6 you.
 7 MR. PANKAUSKI: Yes, that's what I am
 8 speaking about.
 9 THE COURT: So I mean -- I could do one of
 10 two things. I can tell Eliot go over to the
 11 library and start writing out -- Xeroxing this
 12 motion, sign it yourself, and bring it in, and
 13 then, you know --
 14 MR. PANKAUSKI: You just want an oral joinder
 15 right now?
 16 THE COURT: Yeah --
 17 MR. PANKAUSKI: That's fine.
 18 THE COURT: -- that's what I'm getting at.
 19 MR. PANKAUSKI: Yes. Sorry, Judge.
 20 THE COURT: Okay. What's your position on
 21 that?
 22 MR. PANKAUSKI: But Mr. Stansbury can't do
 23 it. Eliot could do it.
 24 THE COURT: I think Eliot needs to be the
 25 complaining party. Now, I'm not saying you can't

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1 participate as counsel to maybe help steer the
 2 evidence. I'm probably thinking that would be
 3 okay, but I think we need Eliot to join.
 4 Mr. Pankauski doesn't have an objection. What do
 5 you say?
 6 MR. FEAMAN: I have no objection to Mr. Eliot
 7 Bernstein joining. I'm just not going to be in a
 8 position of encouraging him to do something and
 9 violate my neutrality.
 10 THE COURT: You are not -- you don't
 11 represent him.
 12 MR. FEAMAN: That's correct.
 13 THE COURT: So Eliot is pro se.
 14 MR. FEAMAN: Correct.
 15 THE COURT: You know, there is a burden that
 16 is on Eliot to start, but since he's joining your
 17 motion, I'm going to allow -- just because for
 18 judicial economy and so we don't have to like come
 19 back on this matter and everyone is ready to go
 20 forward -- for you to help, almost be second chair
 21 counsel, standby counsel, although, I know you
 22 represent William, to just help bring out the
 23 evidence. So I'm going to allow that.
 24 Okay. So Eliot, this is your motion.
 25 MR. ELIOT BERNSTEIN: Okay.

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1 THE COURT: So come on up and sit here so I
 2 can look at you and Judge your credibility when I
 3 hear things that are going on. So sit right there
 4 in the middle.
 5 So whether -- again, I'm not -- I'm not
 6 sure, I won't know til the end, what rule I
 7 think this comes under, but it looks like it's
 8 either 1-9 -- or 1.9 or 1.18, but it sounds
 9 like it's one of those two.
 10 So, okay, so you're up first.
 11 MR. FEAMAN: Thank you. I would call
 12 Mr. Eliot Bernstein to the stand.
 13 THE COURT: I figured that would be first.
 14 Okay. Come on, Eliot.
 15 MR. PANKAUSKI: Opening statements.
 16 THE COURT: He has a right to opening. So
 17 have a seat here and I'll let Mr. Pankauski finish
 18 his opening.
 19 MR. PANKAUSKI: Thanks, Judge. And I --
 20 okay. Thank you, Your Honor. So concisely, we
 21 are traveling -- and I agree with Mr. Stansbury's
 22 counsel -- under 4-1.18. The evidence is going to
 23 show that my firm never had an attorney-client
 24 relationship with Mr. Eliot Bernstein.
 25 And if I may, let's just -- we've dealt

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1 with the standing issue of Mr. Stansbury. You
 2 know, I'm of the position he does not have
 3 standing. I'm also of the position that Eliot
 4 lacks standing to participate in this estate
 5 administration. He's not a beneficiary under
 6 the decedent's will. He's not a beneficiary
 7 under the decedent's revocable trust.
 8 I do recognize that I'm coming in late to
 9 this estate administration.
 10 Eliot Bernstein is not an interested
 11 person in this estate. He shouldn't even be
 12 here.
 13 So I need to --
 14 THE COURT: What is Eliot Bernstein other
 15 than the brother of Ted?
 16 MR. PANKAUSKI: Nothing.
 17 THE COURT: Okay.
 18 MR. PANKAUSKI: I mean, if this was a
 19 guardianship, he may have standing to come in and
 20 participate in the administration of his dad's
 21 person and property, but it's an estate. He
 22 totally lacks standing. And because he lacks
 23 standing, he doesn't -- he's not an interested
 24 person and can't come in and tell Ted Bernstein
 25 who he can hire as an attorney for an estate

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1 administration.
 2 And that's my third point, Your Honor.
 3 This isn't an adverse lawsuit. This isn't a
 4 personal injury case. Mr. Ted Bernstein has
 5 asked Your Honor if he can administer this
 6 estate. He wants to be a fiduciary. As he is
 7 a fiduciary --
 8 THE COURT: Okay. But the participation of
 9 Ted is not questioned. It's whether you can do it
 10 for him.
 11 MR. PANKAUSKI: Understood.
 12 THE COURT: So Ted is -- no one is suggesting
 13 Ted is not eligible to request that he be a PR or
 14 curator. I mean, that wasn't objected to
 15 yesterday.
 16 MR. PANKAUSKI: Understood. And so, if I
 17 may, let me go to the standard that we're
 18 traveling under today and what we should be doing
 19 here. Because we are going to introduce evidence
 20 that there was no attorney-client relationship.
 21 Evidence is going to be introduced that there was
 22 no confidential information that Eliot Bernstein
 23 conveyed to my law firm. The evidence is going to
 24 show that he called up trying to find an attorney
 25 to sue Don Tescher for malpractice regarding some

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1 estate matters of his parents.
 2 I'm going to testify about
 3 Mr. Bernstein's -- excuse me -- about
 4 Mr. Stansbury's verified motion. I'm going to
 5 testify as to what Mr. Stansbury's counsel told
 6 me out there yesterday when you asked me to
 7 step out. And I'm going to demonstrate the
 8 amazing amount of inconsistencies in this
 9 fiction that we had an attorney-client
 10 relationship, or there is some type of
 11 confidential information that is going to be
 12 adverse to Mr. Eliot Bernstein.
 13 So it's a three-fold test or three-prong
 14 test, Your Honor. For you to disqualify this
 15 firm -- for you to say Ted Bernstein, you can
 16 not hire the Pankauski law firm for estate
 17 administration. You would have first to make a
 18 finding of fact that the interests of Ted
 19 Bernstein are materially adverse, not just
 20 adverse, but materially adverse to the
 21 prospective client, Eliot Bernstein.
 22 The second thing that you would need to
 23 find is that I received confidential
 24 information from Mr. Eliot Bernstein.
 25 And then the third thing that you would

<p style="text-align: right;">77</p> <p>1 have to find is that I am going to use that 2 information, that confidential information, to 3 the disadvantage of Mr. Eliot Bernstein in an 4 estate. 5 THE COURT: That you are going to or could? 6 I mean, it couldn't be going to -- 7 MR. PANKAUSKI: That I could. Thank you, 8 Your Honor. 9 So that's the standard under 4-1.18. What 10 does our Fourth District say about this? 11 THE COURT: I kind of want opening and not 12 closing. So I got that part. 13 MR. PANKAUSKI: Okay. So the standard that I 14 would direct our attention to is the Coolis 15 (phonetic) case. You would need to find -- and 16 again, it's a finding of fact -- that I had actual 17 knowledge of material confidential information. 18 What the Fourth has described as protected 19 information. The burden is on Eliot. 20 Finally, because disqualification of a 21 party's counsel is such an egregious 22 punishment, that we can't resort to 23 speculation. Mr. Eliot Bernstein needs to 24 prove by a greater weight of the evidence those 25 three prongs that I described in 4-1.18.</p>	<p style="text-align: right;">79</p> <p>1 don't volunteer, because that's important. Okay. 2 THE WITNESS: Sure. 3 BY MR. FEAMAN 4 Q Is your brother Ted Bernstein presently a 5 beneficiary under the trust established by the estate 6 documents, if you know? 7 A I don't believe so. 8 Q That would be Ted Bernstein? 9 A That would be. 10 Q And are your interests with Ted Bernstein 11 adverse in connection with the estate of Simon Bernstein? 12 A Yes, sir. 13 Q And how so? 14 A Well, I'm pursuing Ted in a number of legal 15 actions, criminal actions, for -- 16 THE COURT: So focus on the question. Okay. 17 He didn't ask anything about criminal actions. 18 So, you know, you're a witness now -- 19 THE WITNESS: We're adverse to each other. 20 THE COURT: You need to pay -- let me 21 finish -- you need to pay attention carefully to 22 the question. Listen. Let me finish. 23 THE WITNESS: Uh-huh. 24 THE COURT: Okay. And not ramble outside the 25 scope of the question. Because Mr. Feaman's</p>
<p style="text-align: right;">78</p> <p>1 Thank you, Your Honor. 2 THE COURT: Okay. All right. Let's get the 3 evidence. Then we can talk about the law once we 4 see what the evidence is. 5 Okay. Raise your right hand. 6 (Thereupon, ELIOT BERNSTEIN was duly sworn 7 by the court) 8 DIRECT EXAMINATION 9 BY MR. FEAMAN 10 Q Thank you. Please state your name. 11 A Eliot Ivan Bernstein. 12 Q Your residence address? 13 A 2753 NW 34th Street, Boca Raton, Florida. 14 Q And you are the son of the late Simon 15 Bernstein? 16 A I am. 17 Q And you reside in Florida presently? 18 A I do. 19 Q And are your children beneficiaries under the 20 estate as it presently is structured? 21 A I'm not a hundred percent sure at this point. 22 Q Okay. 23 A I believe I am. 24 THE COURT: So do this, though. That may be 25 true, but let's make sure you're asked a question,</p>	<p style="text-align: right;">80</p> <p>1 questions are designed to be tailored for this 2 case. 3 Go ahead. 4 BY MR. FEAMAN 5 Q Thank you, Your Honor. 6 How is your interest in the estate of your 7 father directly, or through the trust, established by 8 your father's will, in conflict with that of Ted 9 Bernstein? 10 A I believe we're at conflict because Ted and I 11 differ if Ted and his children are part of the estates. 12 Q Okay. And what do you believe -- what is your 13 understanding, as you sit here today, as to whether Ted 14 and his children -- whether they should inherit under the 15 estate, what is your understanding? 16 MR. PANKAUSKI: Objection. Lack of 17 foundation. 18 THE COURT: I'll let you cross on that, or it 19 may be brought out by his answer. Go ahead. 20 THE WITNESS: I don't believe they should be. 21 BY MR. FEAMAN 22 Q And have you had discussions with Ted 23 concerning this? 24 A Yes. 25 Q And has Ted Bernstein disagreed with you?</p>

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1 A Yes.
 2 Q How so? What has he indicated to you?
 3 A He believes his children should be included
 4 in the estate.
 5 Q Do you disagree with that?
 6 A I do.
 7 Q And did you, in September of last year,
 8 approach, with your wife, the law offices of
 9 Mr. Pankauski?
 10 A Yes, sir.
 11 Q Do you recall about when that was?
 12 A September 20th or so, around that area.
 13 Q And was the approach in person or by phone?
 14 A By phone.
 15 Q Okay. And who called?
 16 A I believe my wife initiated the call.
 17 Q Okay. Were you present when she made the phone
 18 call?
 19 A I don't believe so.
 20 Q Okay. And how long did she -- withdrawn. As a
 21 result of that phone call, was there an e-mail sent to
 22 your -- to Mr. Pankauski's office?
 23 A Yes, sir.
 24 Q Do you know to whom it was sent?
 25 A I believe to Mr. Pankauski and his assistant,

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1 doesn't fit the question.
 2 MR. FEAMAN: Okay. Thank you. Hold on.
 3 BY MR. FEAMAN
 4 Q Are you aware that your wife sent an e-mail to
 5 Mr. Pankauski's office?
 6 A Yes.
 7 Q And after that e-mail, did you personally have
 8 a conversation with Mr. Pankauski's office?
 9 A Yes.
 10 Q With whom did you speak?
 11 A Mr. Pankauski.
 12 Q Directly?
 13 A Yes.
 14 Q Was this by telephone?
 15 A Yes.
 16 Q For how long?
 17 A An hour or so.
 18 Q Was this shortly after -- or within a few days
 19 after the e-mail was sent by your wife?
 20 A Yes, sir.
 21 Q And was he in possession of documents that had
 22 been transmitted by your wife to him?
 23 A Yes, sir.
 24 Q And did you discuss with Mr. Pankauski anything
 25 that you would consider to be confidential?

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1 Michelle Morley.
 2 MR. PANKAUSKI: Objection, speculation. He's
 3 believing.
 4 THE COURT: Okay. Try to avoid belief, tell
 5 me what you know. Can you reanswer?
 6 THE WITNESS: Yes. We sent information to
 7 both Mr. Pankauski and his assistant.
 8 BY MR. FEAMAN
 9 Q And were you -- did your wife send an e-mail as
 10 a follow-up to that telephone conversation?
 11 A Yes.
 12 Q Okay. And were you copied on that e-mail?
 13 A Yes.
 14 Q Okay. Let me show you what's been marked as
 15 Exhibit A, ask you if this is a true copy of the e-mail
 16 that was sent by your wife, in which you were copied,
 17 after the initial conversation that she had with
 18 Mr. Pankauski's office?
 19 THE COURT: So just -- because I think I have
 20 the Exhibit A at the top part of that doesn't
 21 apply, correct? Because that's February 10th.
 22 MR. FEAMAN: Correct.
 23 THE COURT: So if the other -- your question
 24 is, what did Candice send. But this is an e-mail
 25 from Michelle. So it doesn't -- the e-mail

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1 A Yeah, confidential and adverse to the
 2 information about my brother.
 3 Q Like what?
 4 A Like what we thought about my brother's
 5 actions with the other attorneys. The fact that there
 6 was forgery going on. We believed he was working with
 7 the attorneys who resigned yesterday, Tescher and
 8 Spallina. That Tescher and Spallina had brought them
 9 in, had business dealings, et cetera. We gave him a
 10 lot of confidential information, I feel.
 11 Q Did you discuss Mr. Pankauski's law firm
 12 representing you?
 13 A Yes, sir.
 14 Q And was a retainer asked for?
 15 A It was.
 16 Q And what were the terms of the retainer that
 17 you recall?
 18 A To -- he wanted us to pay money and to retain
 19 his services. And we couldn't afford it. And I
 20 basically told him we couldn't afford it.
 21 THE COURT: That's not the question.
 22 THE WITNESS: Oh, okay. Yeah, a retainer was
 23 sought.
 24 BY MR. FEAMAN
 25 Q Was a retainer discussed?

<p style="text-align: right;">85</p> <p>1 A Yes, sir.</p> <p>2 Q And was it an amount of money that you didn't</p> <p>3 presently have at that time?</p> <p>4 A Yes.</p> <p>5 Q And did you set about to try to obtain the</p> <p>6 retainer?</p> <p>7 A I told him I would try to get it from the</p> <p>8 court, and make a petition to the court, which I filed</p> <p>9 with the court. And I've been waiting for an answer on</p> <p>10 that. And then I would have called him back and got</p> <p>11 the money for him.</p> <p>12 Q All right. Did you ever receive any</p> <p>13 communication from Mr. Pankauski saying he was</p> <p>14 affirmatively not going to represent you?</p> <p>15 A No.</p> <p>16 Q When did you hear that Mr. Pankauski had been</p> <p>17 retained by Mr. Ted Bernstein?</p> <p>18 A Oh, week or two ago.</p> <p>19 Q And did you review the notice of appearance</p> <p>20 that was filed by Mr. Pankauski in this case?</p> <p>21 A I did.</p> <p>22 Q When did you receive that?</p> <p>23 A Oh, no, I don't think I've ever reviewed a</p> <p>24 notice of appearance from him.</p> <p>25 Q Okay. And when you found out that</p>	<p style="text-align: right;">87</p> <p>1 A Violated, you know.</p> <p>2 Q What is it?</p> <p>3 A Violated.</p> <p>4 Q Why?</p> <p>5 A Because it's a big risk. You know, he was</p> <p>6 also referred to me by Joel Weissman, who has very</p> <p>7 intimate knowledge of our case and what's going on in</p> <p>8 my life, and information regarding my brother. And</p> <p>9 I've had conversations with Mr. Weissman about that.</p> <p>10 And he was trying to help me out. And I, you know, I</p> <p>11 feel violated, that's all I can say.</p> <p>12 MR. FEAMAN: Okay. No further questions.</p> <p>13 THE COURT: Cross-examination.</p> <p>14 MR. PANKAUSKI: Thank you, Your Honor.</p> <p>15 CROSS EXAMINATION</p> <p>16 BY MR. PANKAUSKI</p> <p>17 Q Good afternoon, Mr. Bernstein.</p> <p>18 A Good afternoon, sir.</p> <p>19 Q In addition to contacting my law firm, you</p> <p>20 contacted Joel Weissman's law firm?</p> <p>21 A Joel Weissman was referred to us.</p> <p>22 Q Is that a yes?</p> <p>23 A Yes.</p> <p>24 Q And you contacted Norman Fleisher?</p> <p>25 A I might have.</p>
<p style="text-align: right;">86</p> <p>1 Mr. Pankauski was coming in on behalf of Mr. Ted</p> <p>2 Bernstein, what was your reaction?</p> <p>3 A I contacted him and said that I felt that he</p> <p>4 was conflicted. And -- that was the first contact.</p> <p>5 Q Did you send him an e-mail in that regard?</p> <p>6 A I did.</p> <p>7 Q And did you express any desire that he not</p> <p>8 represent Mr. Bernstein?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. And what was his response?</p> <p>11 A He didn't see eye to eye with me, basically.</p> <p>12 I sent him then the Bar rules that I felt applied, as a</p> <p>13 follow-up e-mail. Then, you know, I figured I'd come</p> <p>14 here and talk to the judge or something.</p> <p>15 Q So this motion is not something that you have</p> <p>16 expressed to Mr. Pankauski prior to today, is that</p> <p>17 correct?</p> <p>18 A No. No, I asked him politely to disqualify,</p> <p>19 you know, under ethical rules.</p> <p>20 Q Okay. And, obviously, you felt that request</p> <p>21 was rejected, correct?</p> <p>22 A Correct. He's here.</p> <p>23 Q How do you feel as a result of his continuing</p> <p>24 this case in terms of your personal involvement in this</p> <p>25 case?</p>	<p style="text-align: right;">88</p> <p>1 Q You did contact Norman Fleisher?</p> <p>2 A Are you telling me I did?</p> <p>3 Q I'm asking you.</p> <p>4 A No, you were telling me. But I don't know.</p> <p>5 Who is Norman Fleisher?</p> <p>6 Q And you contacted attorney Amy Beller?</p> <p>7 A I might have.</p> <p>8 Q And you contacted Brandon Pratt?</p> <p>9 MR. FEAMAN: Outside the scope of direct.</p> <p>10 THE COURT: Overruled.</p> <p>11 THE WITNESS: I retained Brandon Pratt.</p> <p>12 BY MR. PANKAUSKI</p> <p>13 Q Please tell us what other --</p> <p>14 A The children retained Brandon Pratt.</p> <p>15 Q Your children are minors, correct?</p> <p>16 A Yes.</p> <p>17 Q Please tell us who the other attorneys in Palm</p> <p>18 Beach County are that you contacted regarding this</p> <p>19 matter?</p> <p>20 A No.</p> <p>21 MR. PANKAUSKI: Your Honor, the witness is</p> <p>22 refusing to answer my question and he hasn't --</p> <p>23 THE COURT: I'm sorry.</p> <p>24 THE WITNESS: I answered. I said no.</p> <p>25 THE COURT: I thought he said none.</p>

<p style="text-align: right;">89</p> <p>1 THE WITNESS: I said no. 2 THE COURT: No, you weren't going to answer 3 or no -- 4 THE WITNESS: No, I don't know to tell him 5 who I've contacted in Palm Beach County. 6 THE COURT: Okay. 7 BY MR. PANKAUSKI 8 Q I'm sorry, let me ask you again because I don't 9 think we were clear. Besides the attorneys that I've 10 mentioned, sir, please tell us what other attorneys 11 you've contacted in Florida regarding this matter. 12 A I don't know. 13 MR. FEAMAN: Objection. I think that's 14 confidential. 15 THE WITNESS: And it is. I feel it's 16 confidential too. 17 THE COURT: I'll overrule that. Good ahead. 18 So you can answer if you know of others that you 19 did contact. If not, say so. 20 THE WITNESS: I think I've contacted others, 21 I don't know who. I didn't bring a list of who I 22 contacted and who I haven't. 23 BY MR. PANKAUSKI 24 Q You contacted between 6 and 12 attorneys to 25 represent you in this matter?</p>	<p style="text-align: right;">91</p> <p>1 the estate and has been working closely with them and 2 to block us from getting proper notices and notices of 3 his supposed titles and information and accountings and 4 everything else too. And, you know, so I feel that we 5 have a differing interest in the outcome of the 6 estates. And I've expressed that to you and told you 7 about the documents, and what I thought about him 8 working with Spallina and Tescher and all of those 9 things. So that's stuff I don't normally tell somebody 10 unless they're asking -- and all my documents were 11 marked confidential that I sent you, all my e-mails 12 were marked confidential, et cetera. 13 Q You sent me e-mails? 14 A Me or my wife. 15 Q Okay. You don't remember if you sent me 16 e-mails? 17 A I don't recall at this moment. 18 Q In fact, you never -- 19 A I have sent you e-mails. Yes, I have. 20 Q You sent me, John Pankauski, e-mails? 21 A Yes, sir. 22 Q Do you have any of those with you today? 23 A I believe the ones I just sent you last week, 24 weren't those e-mails? 25 Q Okay. Other than February 10th and</p>
<p style="text-align: right;">90</p> <p>1 A Possibly. 2 Q Okay. And you've provided those attorneys that 3 you've contacted with the information that you provided 4 to my law firm? 5 A Not all of them. Only the ones that 6 requested information under confidentiality. 7 Q And which lawyers -- 8 A Similar to you. 9 Q And which lawyers are those? 10 A I can't recall. 11 Q Okay. Mr. Feaman asked you whether you were 12 adverse to your brother Ted, and you said yes? 13 A Yes. 14 Q How are you adverse to your brother Ted? 15 A We have differing interests in the outcomes 16 out of the estate. 17 Q Can you explain what the differing outcomes 18 are? 19 A Yeah. I believe that there's been fraud in 20 the estate by the estate planners and Ted to change 21 beneficiaries in the estate. I've asserted those 22 claims in the courts and in criminal authorities. And 23 I believe that there's now evidence that certain 24 documents were signed postmortem for my father and 25 myself illegally. Ted brought these attorneys in to</p>	<p style="text-align: right;">92</p> <p>1 February 12th, other than those two, did you send me any 2 e-mails? 3 A I believe my wife did. 4 Q Let's get this straight now. Your wife Candice 5 sent me, personally, John Pankauski, e-mails? 6 A Sorry, your law firm. 7 Q Okay. So let's get this straight. And I'm 8 sorry, but this is important. 9 A No, I don't mind the badgering. 10 THE COURT: Wait. Wait. Stop. Eliot, 11 that's not badgering. 12 THE WITNESS: Okay. Sorry. 13 THE COURT: Okay. So just answer a straight 14 question and this will go smoother. 15 Go ahead. 16 BY MR. PANKAUSKI 17 Q Mr. Bernstein -- Mr. Eliot Bernstein -- you 18 personally, not Candice, you personally never sent an 19 e-mail to my law firm? 20 A I did. 21 Q Other than February 10th and February 12th? 22 A I don't believe so. 23 Q Thank you. 24 Okay. You've read your dad Simon's will? 25 A Yes, sir.</p>

<p style="text-align: right;">93</p> <p>1 Q You are not mentioned in the will as a 2 beneficiary? 3 A Which will? 4 Q Your dad's will. The one that's before this 5 court. 6 A I don't believe so. 7 Q May I approach the witness with a copy of 8 Simon's will? 9 THE COURT: You're allowed to do that. 10 BY MR. PANKAUSKI 11 Q Would you like to take a look at it. If you 12 can just look through your dad, Simon's, will, which I 13 just handed to you, can you just confirm, please, that 14 you are not a beneficiary under your dad's will? 15 A I was convinced under this one I wasn't. But 16 I was told by Spallina and Tescher that I was a 17 personal property beneficiary or something. 18 Q So, you know, are you a beneficiary under your 19 dad's will that I just handed to you? 20 THE COURT: So the date of the will? 21 MR. FEAMAN: Objection, asked and answered. 22 THE COURT: Yeah. Sustained. Date of the 23 will? 24 MR. PANKAUSKI: The date of the will is 25 July 20 -- looks like first -- 2012.</p>	<p style="text-align: right;">95</p> <p>1 A. Do you see that that looks like an e-mail from your 2 wife Candice? 3 A Yes, sir. 4 THE COURT: No, that's -- but that's on 5 February 10th. Is that what you're getting at? 6 MR. PANKAUSKI: Yes, the date doesn't matter. 7 THE COURT: Okay. 8 BY MR. PANKAUSKI 9 Q What is mentioned in line item three? 10 A Copies of revised wills, trusts for Simon 11 Bernstein. 12 Q Thank you. 13 A That means it's an amended and restated trust 14 of Simon, not the trust of Simon that you asked about, 15 just for your edification. 16 Q And, in fact, his amended trust is your dad's 17 last trust, correct? 18 A If you believe what they are saying. 19 Q So you have seen your dad's trust? 20 A No, I've never seen my dad's trust. I've 21 seen an amended and restated trust. The original 22 trust, I believe, has me and my two sisters as 23 beneficiary, and Ted and his children wholly excluded 24 with my sister Pam as the only non-beneficiaries in 25 this whole thing.</p>
<p style="text-align: right;">94</p> <p>1 THE COURT: Okay. Next question. 2 BY MR. PANKAUSKI 3 Q And you are not a beneficiary of your father, 4 Simon's, revocable trust? 5 A I've never seen that. That's been withheld 6 and suppressed and denied by former counsel -- 7 THE COURT: So is the answer I don't know? 8 THE WITNESS: No, it's I've never seen it. 9 THE COURT: Okay. Straight answer, we'll 10 move through this. 11 BY MR. PANKAUSKI 12 Q Your testimony is you've never seen your dad, 13 Simon's, revocable trust? 14 A That's correct. 15 Q Do you have Exhibit A in front of you that 16 Mr. Feaman asked you about earlier? 17 A No. 18 Q And Exhibit A was attached to the verified 19 motion filed by Mr. Stansbury? 20 A No. 21 Q Okay. May I approach the witness? 22 THE COURT: Yeah. 23 BY MR. PANKAUSKI 24 Q I'm going to hand you my verified motion and 25 I'm going to ask you to direct your attention to Exhibit</p>	<p style="text-align: right;">96</p> <p>1 Q You earlier testified that you sent an e-mail 2 to me, Pankauski, and my assistant. Do you recall that 3 testimony? 4 A I believe it was my wife sent an e-mail to 5 your firm. 6 Q Yes. But I'd like to correct that. 7 A Okay. 8 Q Your wife Candice sent an e-mail to my 9 assistant, not to me? 10 A Correct. 11 Q And my assistant followed up with Candice by 12 e-mail? 13 A Well, actually, you requested that your 14 assistant get the documents for your meeting with me. 15 That's how I recall it. Candice came and asked me, and 16 we sent you the information to your assistant for your 17 review for our meeting because you were in California 18 or something. 19 Q Let's be clear. I've never spoken to your wife 20 Candice? 21 A Correct. 22 Q I have never asked Candice for any documents? 23 A Except your assistant asked Candice for 24 documents for our meeting, correct. 25 Q Correct. You said that you had one</p>

<p style="text-align: right;">97</p> <p>1 conversation with me for an hour or so. Do you remember 2 that testimony? 3 A Yeah. And I believe it was two conversations 4 I had with you total. 5 Q Now, it's two conversations? 6 A Yeah. You called me back to tell me you had 7 found a way to pay for your bill. 8 Q And when were those two conversations? 9 A September something. I don't have it in 10 front of me today. I can check my calendar. 11 Q Do you have your calendar with you? 12 A I don't. 13 Q Okay. And how far apart were those two 14 conversations? 15 A Shortly thereafter, I believe. 16 Q And they were in the evening, right? 17 A I believe. 18 Q Both of them were? 19 A I believe. 20 Q And you said the first one lasted an hour or 21 so. Do you recall how long this supposed second 22 conversation lasted? 23 A I believe it was rather brief. 24 Q Less than five minutes? 25 A Maybe more.</p>	<p style="text-align: right;">99</p> <p>1 read that, Mr. Bernstein? 2 A Mr. Pankauski -- 3 Q No, I'm sorry, I meant just read it to 4 yourself, so... 5 A All right. 6 MR. PANKAUSKI: I'm sorry, I don't. I 7 should, but I don't. If you'd like to come over 8 here, you're more than welcome to look at it with 9 me. 10 MR. FEAMAN: May I approach the witness? 11 THE COURT: You may. 12 BY MR. PANKAUSKI 13 Q Do you see about -- in your e-mail -- one, two, 14 three, four, five, six -- bless you, Mr. Rose -- seven 15 lines up from the bottom? 16 A Correct. 17 Q You see that as of February 10th, 18 Mr. Bernstein, your story was that I proposed a retainer 19 of \$200,000? 20 A Correct. 21 Q Okay. So let me go on from there. You were 22 asked whether you had -- whether you discussed 23 confidential information to me, and you said yes? 24 A Correct. 25 Q And you said that it involved forgery and</p>
<p style="text-align: right;">98</p> <p>1 Q And I asked you for -- your belief is that I 2 asked you for a \$200,000 retainer? 3 A No. My belief -- 4 THE COURT: No. No. Wait. Next question. 5 THE WITNESS: Okay. 6 BY MR. PANKAUSKI 7 Q Isn't it your belief that -- strike that. 8 What's your understanding of how much I asked for a 9 retainer? 10 A I don't recall the exact amount for the 11 retainer. 12 THE COURT: Then stop. That's your answer. 13 Next question. 14 BY MR. PANKAUSKI 15 Q You sent me an e-mail on February 10th? 16 A Correct. 17 Q Okay. May I approach the witness. And this is 18 a copy of the February 10th e-mail that you sent to me, 19 correct? 20 A Correct. 21 MR. FEAMAN: Do you have another copy of 22 that? 23 MR. PANKAUSKI: Yeah, I should. 24 BY MR. PANKAUSKI 25 Q And while I'm looking, could you just please</p>	<p style="text-align: right;">100</p> <p>1 Tescher and Spallina, correct? 2 A Yes. 3 Q Any other confidential information? 4 A Yeah, all kinds of stuff. 5 Q Okay. 6 A We talked about in the course of our 7 conversation about you representing us. 8 Q Well, please tell us what that is. 9 A You know, I believe we spoke mainly about the 10 problems in the estate with the forgeries and the 11 notary public, the police investigations that we were 12 launching against Ted, Tescher, et cetera. I believe 13 we talked about the various aspects of our legal 14 strategy in, you know, against the estates and Ted, et 15 cetera, and were looking to retain you. 16 Q Is your testimony that you and I had a 17 conversation about a legal strategy against the estate? 18 A Against -- yes, against the estates, and the 19 people in charge, Tescher, Spallina, the personal 20 representatives, getting rid of them, et cetera. 21 Q And is it your testimony that I discussed trial 22 strategy with you about suing your brother Ted? 23 A Removing the personal representative and Ted 24 from having any interest in the estates. 25 Q I had a discussion with you about removing</p>

<p style="text-align: right;">101</p> <p>1 Ted's interest in your dad's estate? 2 A In all the estates. 3 Q Okay. 4 A That I told you I believe these documents of 5 2012 were forged and fraudulent and that we had 6 evidence, you know, I went into all that. 7 Q Sir, do we agree Ted is not a beneficiary of 8 your dad's estate and that there would be nothing to 9 remove him from? 10 A It's his children, excuse me. 11 Q Isn't it true that you spoke to me about filing 12 a malpractice action? 13 A Excuse me, let me correct that. I did want 14 you to remove Ted. Because Ted was representing that 15 he was trustee of this trust of my father's. And I 16 expressed to you that he hadn't sent out the proper 17 forms. He hadn't followed any of the rules. And that 18 he was acting in bad faith as an alleged fiduciary 19 under alleged documents. 20 Q You spoke to me about a potential malpractice 21 action against Don Tescher? 22 A That was only a small part. 23 Q In fact, you told me that you -- 24 A Excuse me, in fact, you are the one -- we 25 just told you that you should fund your bill from</p>	<p style="text-align: right;">103</p> <p>1 BY MR. PANKAUSKI 2 Q So you and I did discuss malpractice against 3 Mr. Tescher? 4 A Correct. 5 Q Okay. When I asked you about confidential 6 information a moment ago, you were talking about some 7 criminal inquiries, you were talking about some 8 forgeries. You and I discussed a postdated or backdated 9 notary clause? 10 A No. 11 Q We didn't discuss a notary clause that was 12 presented to this court whose notary seal was improper? 13 A Not only the notary seal, but the signatures. 14 Q Okay. So forgive me. You and I had a 15 discussion about a deficient notary clause, correct? 16 A A forgery and deficient notary on a forged 17 document, yes. 18 Q Correct. And when you spoke with me in 19 September of 2013, the notary clause information was 20 already before this court? 21 A Part of it. 22 Q Yeah, it was public information? 23 A Some of it. 24 Q And the criminal matters that you're talking 25 about, those were -- there was already an ongoing</p>
<p style="text-align: right;">102</p> <p>1 Kimberly Moran's forgery and fraud, which Mr. Tescher 2 and Spallina were responsible under Florida law for the 3 acts of their notary who committed postmortem forgery 4 of my father's signature, et cetera. 5 Q You told me that you had been looking for a 6 lawyer to sue Mr. Tescher, but you couldn't find one? 7 A Did I? 8 Q Well, that's my question to you. 9 A Oh, that was a statement. 10 THE COURT: He asked you the question. You 11 can answer. 12 THE WITNESS: What was the -- how -- 13 BY MR. PANKAUSKI 14 Q You told me that you were trying to find an 15 attorney to sue Don Tescher for malpractice? 16 A No. 17 Q You didn't tell me that you were looking for an 18 attorney to sue Don Tescher for malpractice? What did 19 you tell me about the malpractice? 20 A Well, you contacted me and said -- 21 THE COURT: Listen to the question. 22 THE WITNESS: Okay. In regards to the 23 malpractice, I said that case against Tescher and 24 Spallina should be the point of funding for an 25 attorney to get their fees paid for.</p>	<p style="text-align: right;">104</p> <p>1 investigation by the time you and I chatted in September 2 of 2013? 3 A And I don't know if anybody else knew about 4 that, et cetera. 5 Q Is that a yes? 6 A Yes. There were several investigations 7 going. 8 THE COURT: Try not to volunteer, 9 Mr. Bernstein. 10 BY MR. PANKAUSKI 11 Q The matters that you spoke to me about in 12 September of 2013, you had spoken to -- you had spoken 13 about with other individuals? 14 A I had. 15 Q And, in fact, most of that information was 16 public record because much of it was going on right here 17 in this estate proceeding? 18 A No. 19 Q What wasn't a public record? 20 A I don't want to disclose it. I mean, it was 21 confidential information I gave you at the time. 22 That's -- I still feel it's confidential and feel that 23 I'm -- you might be exposing that stuff. 24 Q What's the confidential information? 25 A Just information about the documents we're</p>

<p style="text-align: right;">105</p> <p>1 discussing in this case. 2 Q What information about the documents? 3 A I don't want to -- 4 THE COURT: Okay. He's objecting. 5 Sustained. 6 BY MR. PANKAUSKI 7 Q The February 10th e-mail from Candice to me 8 that's in front of you. 9 A Uh-huh. 10 Q You would agree that those documents, 1 through 11 4, are the only documents that Candice provided to my law 12 firm? 13 MR. FEAMAN: Objection, form. 14 Mischaracterizes the date of the e-mail. 15 MR. PANKAUSKI: Is it February 12th? 16 MR. FEAMAN: It's September 20th -- September 17 19th. 18 MR. PANKAUSKI: Thank you. 19 BY MR. PANKAUSKI 20 Q Thank you. I'm not even close. Thank you. 21 The e-mail that I handed you, the 22 September 20, 2013 e-mail. 23 THE COURT: September 19th. 24 BY MR. PANKAUSKI 25 Q Thank you. September 19, 2013 --</p>	<p style="text-align: right;">107</p> <p>1 Bernstein will 2008, Simon Bernstein -- 2 MR. FEAMAN: Got to go slower because the 3 court reporter -- 4 THE WITNESS: Sorry, sir. Okay. Shirley 5 Bernstein trust, 2008. Shirley Bernstein will, 6 2008. Simon Bernstein amended trust, 2012. Simon 7 Bernstein will, 2012. Waivers unnotarized and 8 notarized, transcripts part 2, 2013, 09/13, 9 Bernstein Holdings, LLC, 2008, last pages, 10 Bernstein Holdings, LLC, Shirley Bernstein 11 petition for discharge. 12 BY MR. PANKAUSKI 13 Q Bernstein, LLC, you were not a member of that 14 entity, correct? 15 A I don't know. 16 Q Okay. So those are the -- 17 A I believe I am a member. 18 Q Okay. So those are all the documents that 19 Candice provided to my law firm? 20 A I believe so. 21 Q Okay. And you did not provide any other 22 documents to my law firm? 23 A I do not believe so. 24 Q So all the documents that were provided to my 25 law firm were documents that are either public documents</p>
<p style="text-align: right;">106</p> <p>1 A It's not in front of me. 2 Q I'm sorry. Is it -- 3 THE COURT: That's the Exhibit A that is 4 attached to the motion. 5 MR. PANKAUSKI: Thank you, Judge. May I 6 approach the witness? 7 THE WITNESS: But I don't have that. 8 THE COURT: Okay. He'll give you a copy. Go 9 ahead. 10 BY MR. PANKAUSKI 11 Q Okay. Mr. Bernstein, so I'm handing you what 12 is Composite Exhibit A, the first page of that, and 13 that's attached to the verified motion of Mr. Stansbury. 14 That's the e-mail that you previously identified sent to 15 my law firm from your wife, Candice, correct? 16 A Correct. 17 Q Okay. And you would agree that the documents 18 listed 1 through 4 are the documents that Candice 19 provided to my law firm? 20 A No. 21 Q Okay. What documents did Candice provide to 22 this law firm? 23 A It's on the next page. 24 Q Okay. And what documents are those? 25 A Shirley Bernstein trust 2008, Shirley</p>	<p style="text-align: right;">108</p> <p>1 or which have been filed with this court? 2 A No. 3 Q Okay. What's not a public document from that 4 list? 5 A Bernstein, LLC stuff. 6 Q And where did you obtain those documents? 7 A I don't recall. 8 Q You obtained them from Tescher and Spallina, 9 didn't you? 10 A I don't think so. I didn't. 11 MR. PANKAUSKI: May I approach and get that? 12 Thanks. 13 Your Honor, I'd like to move Composite 14 Exhibit A into evidence. 15 THE COURT: Any objection? 16 MR. FEAMAN: No objection. 17 THE COURT: Okay. That's the February 19 18 letter? 19 MR. PANKAUSKI: Yes. 20 THE COURT: From Michelle Morley to Candice, 21 correct? 22 MR. PANKAUSKI: Forgive me, it's the Monday, 23 February 10th, 2014, Candice Bernstein e-mail 24 to -- it's not even to Michelle -- 25 MR. FEAMAN: That's the heading because it's</p>

<p style="text-align: right;">109</p> <p>1 how it was transmitted, but it's the September 19, 2 2013 e-mail from Michelle Morley to 3 Mrs. Bernstein. And then the follow-up e-mail 4 from Mrs. Bernstein. 5 THE COURT: September 19 e-mail from Michelle 6 to Candice is 1. 7 (Thereupon, Exhibit Number 1 was marked in 8 evidence) 9 MR. PANKAUSKI: Thank you. 10 THE COURT: Number 2 will be the 11 September 20, 2013 e-mail from Candice to 12 Michelle. 13 (Thereupon, Exhibit Number 2 was marked in 14 evidence) 15 MR. PANKAUSKI: Thank you. 16 THE COURT: So I'll need stamps on them 17 eventually. 18 MR. PANKAUSKI: Yes. 19 THE COURT: I have them here. 20 BY MR. PANKAUSKI 21 Q Do you remember when Mr. Stansbury's counsel 22 questioned you about you receiving a letter from 23 Pankauski saying there was no representation? 24 A What do you mean? 25 Q I'm just asking you if you remember that</p>	<p style="text-align: right;">111</p> <p>1 lawyers and you are not a client? 2 A Yeah. 3 Q You received this letter from my office within 4 a day or two of September 24, 2013? 5 A I never got it. 6 Q Okay. 7 A I've never seen that letter in my life. 8 How did you send it? 9 MR. FEAMAN: You don't get to ask questions. 10 THE WITNESS: Oh, sorry. 11 Can I show that to my wife? 12 BY MR. PANKAUSKI 13 Q Mr. Stansbury's counsel, in his opening 14 statement, said that a relationship was formed between 15 you and me. You have never signed a legal services 16 contract with my law firm? 17 A Correct. 18 Q You've never provided an initial fee or 19 retainer to my law firm? 20 A Correct. 21 MR. FEAMAN: We'll stipulate, Your Honor, 22 there is -- 23 THE COURT: Stipulation accepted. Got it. 24 MR. FEAMAN: -- no formal relationship. 25 BY MR. PANKAUSKI</p>
<p style="text-align: right;">110</p> <p>1 Mr. Stansbury's counsel asked you did you ever receive a 2 letter from Pankauski saying I don't represent you? 3 A Correct. 4 Q And you replied in the negative. You said you 5 never received the letter? 6 A Correct. 7 MR. PANKAUSKI: May I approach the witness, 8 Your Honor? 9 THE COURT: Yes. 10 BY MR. PANKAUSKI 11 Q Mr. Bernstein, be kind enough to look at the 12 one-page document that I handed you. Do you see that it 13 is a September 24, 2013 letter addressed to you at your 14 home address? 15 A Allegedly. I've never seen it. 16 Q And do you see that it's from my law firm? 17 A I do. 18 Q And do you see in the third paragraph it 19 references a malpractice action? 20 A Yeah. 21 Q And do you see in the first sentence -- 22 A Yeah. 23 Q Excuse me, do you see in the second paragraph 24 where it says, because we have not been hired, we are not 25 doing any work on your behalf, period. We are not your</p>	<p style="text-align: right;">112</p> <p>1 Q The documents that's on Exhibit 1 that Candice 2 sent to my law firm were documents which you obtained 3 from Tescher and Spallina? 4 A No. 5 Q Who did you obtain those from? 6 A Christine Yates. 7 Q And who's Christine Yates? 8 A She's an attorney at Tripp Scott law firm. 9 Q Okay. And how did you get those documents on 10 Exhibit 1 from the Tripp Scott law firm? 11 MR. FEAMAN: Objection, attorney-client 12 privilege. 13 THE COURT: I don't know that there is one. 14 THE WITNESS: Okay. I'll object on that 15 ground, too. 16 THE COURT: Well -- 17 THE WITNESS: That means she is my attorney 18 for me and my children. 19 THE COURT: Okay. I'm going to overrule. I 20 think you need to say how you got the documents. 21 THE WITNESS: She transmitted them to me. 22 THE COURT: All right. 23 BY MR. PANKAUSKI 24 Q Where did she receive them from? 25 A No idea.</p>

<p style="text-align: right;">113</p> <p>1 Q Okay. So you also hired Tripp Scott to 2 represent you regarding your mom and dad's estate? 3 A I hired them to represent us, my children and 4 I. And then I had to split it out to just my children 5 because of the conflicts. 6 Q Tripp Scott still does not represent you? 7 A No, they don't now. 8 Q Because you can't pay them? 9 A Partially. 10 Q And Brandon Pratt doesn't represent you because 11 you can't pay him? 12 A No. 13 MR. FEAMAN: Objection, relevancy. 14 THE COURT: Yeah, sustained. 15 THE WITNESS: I actually overpaid him. 16 THE COURT: Don't do that. Eliot, you know 17 the rules. 18 THE WITNESS: Sorry, sir. 19 MR. PANKAUSKI: May I approach the witness, 20 Your Honor? 21 THE COURT: May you what? 22 MR. PANKAUSKI: Approach the witness. 23 THE COURT: Sure. You don't have to ask me. 24 BY MR. PANKAUSKI 25 Q Mr. Bernstein, I'm going to hand you a</p>	<p style="text-align: right;">115</p> <p>1 MR. FEAMAN: I have a relevancy objection to 2 number 4, the batch of documents. 3 THE COURT: Let's get through the ID part of 4 it first, though. 5 MR. FEAMAN: Okay. 6 BY MR. PANKAUSKI 7 Q So Mr. Bernstein, you recognize that I've 8 handed you a 74-page e-mail? 9 A Yes, sir. 10 Q And that was an e-mail that you prepared? 11 A I'd have to read it all and check that 12 nothing has been changed. But -- 13 Q Well, I -- 14 A Looks like it could be. 15 Q I'm sorry? 16 A I said it looks like it could be, but I'd 17 have to check. There's been a lot of document 18 tampering going on, so I'm not going to attest to it a 19 hundred percent. I haven't had time to review it. 20 Q Okay. Would you turn to Page 2, please? 21 A Yes. 22 Q And I'm directing this question to you about 23 your claim that you shared confidential information with 24 my firm. So please keep that in mind when I ask you 25 these questions. On Page 2 -- excuse me. Go back to</p>
<p style="text-align: right;">114</p> <p>1 composite exhibit, a number of documents -- forgive me, 2 it's not a composite document. It's one e-mail. And 3 Mr. Bernstein, you recognize that as an e-mail that you 4 sent to Ted Bernstein and a number of other people? 5 THE COURT: Okay. Can I ask one thing before 6 you do. You were talking about a September 24 7 letter that wasn't introduced into evidence, is 8 that -- I think that you were short copies of 9 that. 10 MR. PANKAUSKI: Yes, Your Honor. Thank you. 11 The September 24, 2013 letter, I'd like to move 12 into evidence. 13 THE COURT: Any objection. 14 MR. FEAMAN: No objection. 15 THE COURT: All right, number 3. I'll give 16 you these things to stamp, here's one, two and -- 17 you'll have three. 18 (Thereupon, Exhibit Number 3 was marked in 19 evidence) 20 MR. PANKAUSKI: Thank you. May I grab the 21 stamp? 22 MR. FEAMAN: I do. 23 THE COURT: Let him finish stamping them and 24 then -- so next one will be purportedly number 4, 25 but we're not there yet.</p>	<p style="text-align: right;">116</p> <p>1 Page 1 for a moment. In this e-mail you not only sent it 2 to Ted Bernstein, but you sent it to everybody after the 3 to, T-O, colon, correct? 4 A Is the date missing on that? 5 MR. FEAMAN: That's my objection; improper, 6 lack of foundation. Wait. Excuse me. 7 THE WITNESS: Sorry. 8 THE COURT: Let me see it. 9 MR. FEAMAN: My objection is lack of 10 predicate, foundation. 11 THE COURT: I need to see it, so. This is 12 I.D. Number 4. Are you moving this into evidence? 13 Because you need to do that if you're going to 14 refer to it. 15 MR. PANKAUSKI: Most probably. Yes, Your 16 Honor. 17 THE COURT: Okay. But Mr. Feaman, Eliot 18 Bernstein identified this as his e-mail. He just 19 said he didn't have a chance to look at all the 20 pages to make sure there weren't any documents 21 that were snuck in, in essence. 22 THE WITNESS: Without the date, I would say 23 it's not my e-mail. 24 MR. FEAMAN: Excuse me, Mr. Bernstein, if I 25 may.</p>

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1 THE WITNESS: Sorry.

2 MR. FEAMAN: Without a date, Your Honor, you

3 can't connect confidential -- he's offering it for

4 the purpose that somehow it was --

5 THE COURT: First thing is to identify it. I

6 haven't determined more than that right now. So

7 this is -- it's being shown to Eliot Bernstein,

8 purportedly, to be an e-mail from him to others.

9 MR. FEAMAN: Correct.

10 THE WITNESS: Well, now that it's missing the

11 date, I would say it's not my e-mail.

12 THE COURT: Okay. So are you sure you want

13 me to believe that part of your testimony? Listen

14 to me carefully. Because if I don't believe it,

15 I'm likely not to believe anything else you say.

16 THE WITNESS: Okay. I'll believe it.

17 THE COURT: Look at the e-mail. Let's not

18 play games with me.

19 THE WITNESS: I'm not.

20 THE COURT: Well, that was a game playing --

21 THE WITNESS: Well, I notice right off the

22 bat my normal stamp on my e-mails isn't here.

23 That scared me. So I said --

24 THE COURT: So is I-V-I-E-W-I-T --

25 THE WITNESS: Yeah. Yeah. That's all good.

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1 give -- the weight I give it, I'm not sure. If

2 there is an issue about when it was sent. So do

3 you remember when you sent this e-mail?

4 THE WITNESS: Looks like maybe shortly after

5 December 26 in response to letters from Tescher

6 and Spallina that are attached.

7 THE COURT: Of what year?

8 THE WITNESS: 2013.

9 THE COURT: Okay. All right. So objection

10 overruled. This is Number 4.

11 (Thereupon, Exhibit Number 4 was marked in

12 evidence)

13 MR. PANKAUSKI: Your Honor, may I get that

14 copy back and use this one?

15 THE COURT: All right.

16 MR. PANKAUSKI: I'll stamp it.

17 THE COURT: Okay.

18 BY MR. PANKAUSKI

19 Q Mr. Bernstein, would you be good enough to turn

20 to Page 2, please?

21 A Yes, sir.

22 Q And so you see on Page 2 that in this

23 communication to all these people, this e-mail?

24 A Yes, sir.

25 Q You're discussing forgery and fraud?

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1 THE COURT: I mean, that's you, right? I

2 mean, if we go ahead and pull your hard drive,

3 will we find this e-mail?

4 THE WITNESS: No. No. We can go on that

5 assumption.

6 THE COURT: Okay. That's -- okay. All

7 right. But I don't know the date of it, and you

8 can ask questions about that. But the subject is

9 response to Ted and Donald letters, re, emergency

10 distributions. And then there's a whole bunch of

11 other things there. Okay. And then there's some

12 other dates that are in the body of this exhibit.

13 So Mr. Feaman, your objection is what?

14 MR. FEAMAN: Without an establishment of a

15 date on the e-mail it has no probative value as to

16 whether the communications that Eliot made with

17 Mr. Pankauski in September were confidential or

18 not.

19 THE COURT: Okay. So let me think about

20 that. I'm looking here at the documents and

21 they -- that are contained in this e-mail -- and

22 there are a bunch of dates there. I see 2012,

23 2013 dates, court proceedings before me at some

24 point in 2013. And so admissibility versus

25 weight -- it's admissible. I mean, I may have to

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1 A Yes, sir.

2 Q And you're discussing wills and trusts of

3 Simon's estate, correct?

4 A Well, this is all after our conversation by a

5 long time, I believe.

6 Q Is that a yes?

7 A Yes.

8 Q And you're discussing a power of appointment,

9 right?

10 A Yes.

11 Q And you're talking about grandchildren and

12 beneficiaries, correct?

13 A Correct.

14 Q And if you turn back to one, you sent this to

15 attorney Mark Manceri?

16 A Yes, sir.

17 Q And you sent it to attorney Caroline Rogers?

18 A Yes, sir.

19 Q Mark Garber?

20 A Yes, sir.

21 Q You sent it to lawyers at Plaster Greenberg?

22 A Yes, sir.

23 Q In fact, you sent it to, what, a dozen or so

24 attorneys?

25 A Yes, sir.

<p style="text-align: right;">121</p> <p>1 Q Okay.</p> <p>2 THE COURT: I need the Exhibit 4 so I can see</p> <p>3 it. As well as the other exhibits if you've</p> <p>4 stamped them.</p> <p>5 MR. PANKAUSKI: Yes, I think we did. I'll</p> <p>6 complete them before we leave.</p> <p>7 Thank you.</p> <p>8 BY MR. PANKAUSKI</p> <p>9 Q Mr. Bernstein, just a couple questions about</p> <p>10 your interest in this estate of your father. You</p> <p>11 mentioned that -- I believe you testified that you</p> <p>12 believe you inherit from your dad Simon's estate, is that</p> <p>13 accurate.</p> <p>14 A I do.</p> <p>15 Q Okay. And you don't want to have Ted be the</p> <p>16 personal representative of the curator because your</p> <p>17 interests are adverse to Ted's?</p> <p>18 A And because Ted's been involved in a lot of</p> <p>19 confidential information, I discussed with you on the</p> <p>20 phone.</p> <p>21 Q The truth is, is that you've asked Ted for</p> <p>22 money to live on and Ted won't give you that money?</p> <p>23 A That's your interpretation.</p> <p>24 THE COURT: Listen to the question. Try to</p> <p>25 answer it.</p>	<p style="text-align: right;">123</p> <p>1 done this before and you're experienced in this.</p> <p>2 I've warned you --</p> <p>3 THE WITNESS: I have never done it.</p> <p>4 THE COURT: Listen to the question. Okay.</p> <p>5 You don't understand the question, ask that it be</p> <p>6 repeated. Mr. Feaman is a really good trial</p> <p>7 lawyer. He's not objecting. That means it's a</p> <p>8 proper question. And limit your answer to the</p> <p>9 question. But when you do a narrative, I block it</p> <p>10 out. I don't pay attention to anything you're</p> <p>11 saying. You are not helping your cause. You're</p> <p>12 hurting yourself.</p> <p>13 THE WITNESS: I'm sorry, it's my first time</p> <p>14 ever being --</p> <p>15 THE COURT: So it's your first time wanting</p> <p>16 to hurt yourself.</p> <p>17 THE WITNESS: No, now that you've explained</p> <p>18 it --</p> <p>19 THE COURT: So your answer is stricken. If</p> <p>20 the reporter will read back the question, we can</p> <p>21 get a clean answer. And don't give a rambling</p> <p>22 narrative, please.</p> <p>23 THE WITNESS: Okay. I apologize.</p> <p>24 (Record read)</p> <p>25 THE WITNESS: Yes, sir.</p>
<p style="text-align: right;">122</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q Yes or no? Is that a yes?</p> <p>3 A I have been forced to ask Ted, yes.</p> <p>4 Q You've asked Ted to pay your -- the expenses of</p> <p>5 your residence?</p> <p>6 A What happened was --</p> <p>7 THE COURT: No. No. Listen. Stop. Stop.</p> <p>8 THE WITNESS: Yeah.</p> <p>9 THE COURT: Listen. Your question has to be</p> <p>10 narrow to the -- your answer has to be narrow to</p> <p>11 the --</p> <p>12 THE WITNESS: I was directed to Ted to pay</p> <p>13 those bills.</p> <p>14 BY MR. PANKAUSKI</p> <p>15 Q And Ted has refused?</p> <p>16 A Ted has denied that Janet Craig at</p> <p>17 Oppenheimer directed that he volunteer to pay the</p> <p>18 bills. And I was supposed to deal with Ted only, since</p> <p>19 she had -- he had volunteered to become manager of a</p> <p>20 company which he didn't have legal rights to and she</p> <p>21 didn't have the --</p> <p>22 THE COURT: Stop. Stop.</p> <p>23 THE WITNESS: Sorry, Your Honor.</p> <p>24 THE COURT: Your answer is stricken. So,</p> <p>25 Eliot, here's the last -- you know, I mean, you've</p>	<p style="text-align: right;">124</p> <p>1 BY MR. PANKAUSKI</p> <p>2 Q And Ted's refused to?</p> <p>3 A No.</p> <p>4 Q Okay. You've asked your brother Ted to pay</p> <p>5 your children's tuition?</p> <p>6 A I've asked him to pay the expenses of</p> <p>7 Bernstein Family Realty and the welfare --</p> <p>8 THE COURT: No. No. See, he didn't ask you</p> <p>9 about that.</p> <p>10 MR. FEAMAN: Wait. I have to object to the</p> <p>11 form. And it doesn't define Ted in what capacity.</p> <p>12 THE COURT: I don't know that I need a</p> <p>13 capacity for that question. It's a little</p> <p>14 different type of question. So the objection is</p> <p>15 overruled. But, again, Eliot, listen to the</p> <p>16 question. Answer it as asked.</p> <p>17 Go ahead. Let's read it back.</p> <p>18 (Record read)</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. PANKAUSKI</p> <p>21 Q You are not currently employed?</p> <p>22 A No, I am currently employed.</p> <p>23 Q Where are you employed?</p> <p>24 MR. FEAMAN: Relevancy.</p> <p>25 THE COURT: Yeah, tell me the relevancy.</p>

125	<p>1 MR. PANKAUSKI: Impeachment.</p> <p>2 THE COURT: Impeachment of what?</p> <p>3 MR. PANKAUSKI: This isn't about his brother</p> <p>4 not serving in a fiduciary capacity. It's about</p> <p>5 his wanting for money. He's unemployed. He keeps</p> <p>6 asking for money.</p> <p>7 MR. FEAMAN: Objection. Move to strike.</p> <p>8 THE COURT: Okay. So the objection to that</p> <p>9 last question is sustained.</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q You are blogging and speaking publicly about</p> <p>12 the issues that you communicated to my law firm?</p> <p>13 A Anything public I communicate to people who</p> <p>14 are watching the public record.</p> <p>15 Q Is that a yes?</p> <p>16 A Ask the question again, please.</p> <p>17 MR. PANKAUSKI: Sure. The court reporter, if</p> <p>18 you could read it back, please.</p> <p>19 (Record read)</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. PANKAUSKI</p> <p>22 Q Okay. May I approach the witness?</p> <p>23 THE COURT: You may.</p> <p>24 BY MR. PANKAUSKI</p> <p>25 Q Mr. Bernstein, I'm going to hand you a</p>	127	<p>1 Q Is that a no?</p> <p>2 A I don't believe so.</p> <p>3 Q You were contacted by a firm on behalf of Ted</p> <p>4 Bernstein to ask you to stop blogging about this case?</p> <p>5 MR. FEAMAN: Objection to the form. It's not</p> <p>6 a question, it's a statement.</p> <p>7 THE COURT: Restate what you're saying in the</p> <p>8 form of a question.</p> <p>9 BY MR. PANKAUSKI</p> <p>10 Q Were you contacted by a firm on behalf of Ted</p> <p>11 Bernstein to request that you stop blogging about this</p> <p>12 case?</p> <p>13 A I do not believe so.</p> <p>14 Q You have seen this document that's in front of</p> <p>15 you before?</p> <p>16 A No.</p> <p>17 Q It's your testimony that you have never seen</p> <p>18 the document that I just placed in front of you before,</p> <p>19 ever?</p> <p>20 A No.</p> <p>21 THE COURT: Wait. But, no, I'm not sure your</p> <p>22 testimony is you have seen it before, or you</p> <p>23 haven't?</p> <p>24 THE WITNESS: I've never seen this document</p> <p>25 before.</p>
126	<p>1 document -- would you like a copy?</p> <p>2 MR. FEAMAN: If you have one.</p> <p>3 Thank you.</p> <p>4 MR. PANKAUSKI: Your Honor, may I approach?</p> <p>5 THE COURT: This will be Number 5?</p> <p>6 MR. PANKAUSKI: Yes.</p> <p>7 THE COURT: Okay.</p> <p>8 (Thereupon, Exhibit Number 5 was marked</p> <p>9 for identification)</p> <p>10 BY MR. PANKAUSKI</p> <p>11 Q This is a blog about Ted Bernstein?</p> <p>12 A Looks like it.</p> <p>13 Q And Judge Colin?</p> <p>14 A Yeah.</p> <p>15 Q And Don Tescher?</p> <p>16 A Yeah.</p> <p>17 Q This is a blog that you published on the</p> <p>18 Internet?</p> <p>19 A Incorrect.</p> <p>20 Q Who published this blog?</p> <p>21 A Looks like investigative blogger Crystal Cox.</p> <p>22 Q You were contacted by your brother Ted</p> <p>23 beseeching you, asking you to stop blogging about this</p> <p>24 case.</p> <p>25 A I was?</p>	128	<p>1 THE COURT: Okay.</p> <p>2 BY MR. PANKAUSKI</p> <p>3 Q You know a blogger known as Crystal Cox?</p> <p>4 A I do.</p> <p>5 Q And you provide Crystal Cox with information</p> <p>6 about this case?</p> <p>7 A About several cases.</p> <p>8 Q In fact, the blog that's in front of you, the</p> <p>9 document that I just handed you, that is the product of</p> <p>10 information which you provided to blogger Crystal Cox?</p> <p>11 A I have no idea. She could have got it</p> <p>12 anywhere. Most of it's public information, looks like</p> <p>13 to me. I can take a look.</p> <p>14 Q I didn't ask you where -- about the source.</p> <p>15 What I'm trying to tell -- trying to ask you is that the</p> <p>16 information that Crystal Cox blogged on, that's in front</p> <p>17 of you, came from information which you provided to</p> <p>18 Crystal Cox?</p> <p>19 A No.</p> <p>20 Q It didn't?</p> <p>21 A Not that I know of.</p> <p>22 Q You have provided Crystal Cox information about</p> <p>23 Judge Colin.</p> <p>24 A I've provided information --</p> <p>25 MR. FEAMAN: Objection to the form.</p>

129	<p>1 THE COURT: What's wrong with the form?</p> <p>2 MR. FEAMAN: It's a statement. You have</p> <p>3 provided information. You have to ask a question.</p> <p>4 THE COURT: Do it in the form of a question.</p> <p>5 BY MR. PANKAUSKI</p> <p>6 Q Have you provided information to Crystal Cox</p> <p>7 about Judge Colin?</p> <p>8 A I believe so.</p> <p>9 Q About this estate?</p> <p>10 A I believe so.</p> <p>11 Q About your mother and father's wills and</p> <p>12 trusts?</p> <p>13 A I don't recall.</p> <p>14 Q About Ted Bernstein?</p> <p>15 A Yes.</p> <p>16 Q And after you provided this information to</p> <p>17 Crystal Cox, Crystal Cox blogged about those things?</p> <p>18 A Okay.</p> <p>19 Q That's a yes?</p> <p>20 A That was a statement, wasn't it?</p> <p>21 Q Okay. No, that was a leading question.</p> <p>22 A Okay.</p> <p>23 Q Do you need it read back to you?</p> <p>24 MR. FEAMAN: Objection to the form.</p> <p>25 THE COURT: Go ahead.</p>	131	<p>1 Q Okay. And was Mr. Ted Bernstein subsequently</p> <p>2 appointed as personal representative of Shirley</p> <p>3 Bernstein's estate after you spoke to him?</p> <p>4 A Yes, sir.</p> <p>5 Q Do you still wish to remove Ted Bernstein as</p> <p>6 personal representative of the estate of Shirley</p> <p>7 Bernstein?</p> <p>8 A Yes, sir.</p> <p>9 Q Do you wish to remove him as trustee of -- in</p> <p>10 what -- as the apparent trustee of your father's trust?</p> <p>11 A Yes, sir.</p> <p>12 Q Okay. Did you discuss that with Mr. Pankauski?</p> <p>13 A Yes.</p> <p>14 MR. FEAMAN: No further questions.</p> <p>15 THE COURT: Okay.</p> <p>16 All right. Thanks. You can step down,</p> <p>17 Eliot.</p> <p>18 MR. FEAMAN: The e-mails are in, so I --</p> <p>19 THE COURT: One through 4 is in.</p> <p>20 MR. FEAMAN: So there is no need for me to</p> <p>21 call Candice Bernstein to authenticate them.</p> <p>22 THE COURT: They are in evidence.</p> <p>23 Next witness.</p> <p>24 MR. FEAMAN: No other witnesses.</p> <p>25 THE COURT: Okay. Mr. Pankauski, you're</p>
130	<p>1 MR. PANKAUSKI: Could you please read it</p> <p>2 back, Mr. Reporter.</p> <p>3 (Record read)</p> <p>4 BY MR. PANKAUSKI</p> <p>5 Q Okay. It was a yes or no question.</p> <p>6 A It was? Okay. Appears she blogged about</p> <p>7 certain of those things.</p> <p>8 MR. PANKAUSKI: Thank you, Your Honor. I</p> <p>9 don't have any more questions.</p> <p>10 THE COURT: Number 5 is ID only, not in</p> <p>11 evidence.</p> <p>12 MR. PANKAUSKI: Thank you.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. FEAMAN: I have one question.</p> <p>15 THE COURT: Redirect, yes.</p> <p>16 REDIRECT EXAMINATION</p> <p>17 BY MR. FEAMAN</p> <p>18 Q Mr. Eliot Bernstein --</p> <p>19 A Yes, sir.</p> <p>20 Q -- in September of 2013, about the time that</p> <p>21 the e-mails went back and forth from Mr. Pankauski's</p> <p>22 office to your wife, did you talk to Mr. Pankauski about</p> <p>23 opposing Mr. Ted Bernstein as personal representative of</p> <p>24 the estate of Shirley Bernstein?</p> <p>25 A Yes, sir.</p>	132	<p>1 first.</p> <p>2 MR. PANKAUSKI: I'm going to testify,</p> <p>3 Mr. Rose is going to examine me.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. PANKAUSKI: Thank you.</p> <p>6 MR. ROSE: Your Honor, is it okay if I</p> <p>7 examine from the counsel table?</p> <p>8 THE COURT: Sure. I need -- I do need the</p> <p>9 Exhibits 1 through 3. I only have --</p> <p>10 MR. PANKAUSKI: Yes. One, two, three.</p> <p>11 Four should be here.</p> <p>12 Thank you, Your Honor.</p> <p>13 (Thereupon, JOHN PANKAUSKI was duly sworn</p> <p>14 by the court)</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. ROSE</p> <p>17 Q State your name for the record.</p> <p>18 A John Pankauski.</p> <p>19 Q Do you have any -- did you bring any papers</p> <p>20 with you today?</p> <p>21 A I did. I have an affidavit that I've had</p> <p>22 executed, that I'd like to file with the court, because</p> <p>23 they -- a case that says affidavits should be filed,</p> <p>24 and it's my understanding that's part of the procedure.</p> <p>25 I'd like to provide a copy to counsel and have it filed</p>

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1 and introduced into evidence.
 2 THE COURT: You can file the affidavit and it
 3 goes into the court file. You can give a copy to
 4 Mr. Feaman and to Eliot Bernstein.
 5 THE WITNESS: Okay. Thank you, Your Honor.
 6 MR. FEAMAN: I object to it as evidence.
 7 THE COURT: Yeah. No, it's --
 8 MR. FEAMAN: It's hearsay and it's
 9 cumulative.
 10 THE COURT: You can file it. I don't know
 11 what I'm going to do with it, but you're there to
 12 testify live. So go ahead. But you can file
 13 that, the original with the clerk, and give
 14 copies -- I'll let you give two copies for
 15 Mr. Feaman so he can get one for Eliot.
 16 THE WITNESS: Thank you, I'll give those to
 17 him now.
 18 BY MR. ROSE
 19 Q Can you describe and explain to the court how
 20 you came to represent Ted Bernstein?
 21 A I did. I was contacted by you on a Sunday
 22 morning in January, I was on my way to the Estate
 23 Planning Institute in Orlando, and you had asked me to
 24 change my travel plans to meet with you and Mr. Ted
 25 Bernstein in your office downtown.

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1 did you continue on with your trip to wherever you were
 2 going while we interrupted it?
 3 A After I met with you and Mr. Ted Bernstein, I
 4 did, I went up to Orlando.
 5 Q Okay. Did you subsequently conduct an
 6 investigation to determine whether there was anything
 7 that would prohibit you from representing my client, Ted
 8 Bernstein, as a fiduciary in these matters now that his
 9 lawyers had indicated there was a problem and they would
 10 need to withdraw?
 11 A Yes, I did. What I did is I went back and I
 12 spoke to my office, I spoke to the person who does our
 13 intake. When a prospective client calls our office,
 14 they do not speak with an attorney, they speak with a
 15 person who does the intake. I spoke with that person.
 16 She said that she did recall this issue about a
 17 backdated notary clause. She went on her computer. I
 18 examined her computer screen with her. She revealed to
 19 me that Candice, the wife of Eliot Bernstein, had
 20 spoken to her about a matter involving Don Tescher and
 21 a backdated notary clause. I had her review her
 22 e-mails. I had her review whatever documents that were
 23 sent. She confirmed that the only documents that were
 24 sent were public documents, wills and trusts. I think
 25 there was a deposition transcript from a hearing.

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1 Q Did we give you any indication as to the
 2 subject matter of the meeting?
 3 A You did. There was a great sense of urgency
 4 and distraught. You had said that you were involved in
 5 an estate matter that had been -- you had just been
 6 informed -- your client had just been informed that
 7 somebody evidently fabricated a trust amendment and
 8 you'd requested to speak to me about that.
 9 Q Did we, in fact, meet that day?
 10 A We did. You met with me and your client, Ted
 11 Bernstein, in your office. You began telling me about
 12 an estate case down here involving Don Tescher. And
 13 you told me that there had been this backdated or
 14 post-death dated waiver or notary clause. And at that
 15 time I conveyed to you that -- I asked you the names of
 16 all the parties. None of the party's names rang a
 17 bell. But when you mentioned Mr. Tescher and a
 18 backdated notary clause, I told you that somebody had
 19 called our office regarding Mr. Tescher and a
 20 malpractice claim involving a backdated notary clause.
 21 And I conveyed to you and Ted that I would need to
 22 conduct an investigation as to whether I owed any
 23 duties to a prospective client and the nature of that
 24 communication with my law firm.
 25 Q Did you -- did you have -- after our meeting,

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1 After that, I went into my own computer, I looked at my
 2 e-mails. I didn't see any e-mails about this subject
 3 matter. I looked in my computer and what I saw was a
 4 one take -- one-page intake sheet from the person who
 5 does my intakes saying she spoke with Candice on a
 6 particular date in September. And I also found what is
 7 Exhibit 3, which is what we call a no-rep letter. It's
 8 a letter that my office sent to Eliot Bernstein on
 9 September 23, 2003 [sic]. It's a standard practice in
 10 our firm that when a prospective client calls us and we
 11 are not retained, we send out a do-not-rep letter.
 12 And, basically, it says that you contacted us. You
 13 decided not to hire us. We're not your lawyers and you
 14 are not a client. This letter went out from my office
 15 to Eliot Bernstein on September 24, 2013.
 16 Q Can you -- by looking at Exhibits 1 and 2, can
 17 you tell the date the documents were sent to you?
 18 A Yes, I just need to get them.
 19 Q Okay.
 20 A May I, Your Honor? Yeah, Candice and Eliot
 21 did not e-mail me. They didn't even know my e-mail
 22 address. They e-mailed Michelle at my firm, the intake
 23 person. I had one conversation with Eliot, not two.
 24 It wasn't during the day, it was during the evening.
 25 And so Exhibit 1 was an e-mail from Michelle to, I

<p style="text-align: right;">137</p> <p>1 guess, it's Eliot's wife, Candice, on Thursday, 2 September 19, 2013. Exhibit 2 is an e-mail to Michelle 3 from Candice on Friday, September 20, 2013. The 4 September 20th is an evening e-mail from Candice to 5 Michelle, 7:10 p.m., I think that's why they're 6 confused about speaking with me in the evening. I 7 never spoke with Candice. I only spoke with Eliot once 8 and that was in the afternoon. 9 Q Do you know which day -- was it the 19th, the 10 20th or a different day, that you actually spoke with 11 him? 12 A I don't. I remember where I was. I was -- I 13 was in my office. I was at my desk. I had my headset 14 on. I don't have a headset at home. I spoke with 15 Mr. Bernstein and I remember it because he wanted to 16 sue Don Tescher. And I know Don Tescher's name. I 17 don't really know Mr. Spallina, but I know Don Tescher. 18 And he was talking about a malpractice case and he was 19 talking about a backdated notary. And this was like 20 out of a novel, so I do remember those facts. But the 21 reason for the call was to discuss a malpractice 22 action. And I even referenced that in Exhibit 3; I 23 tell him that there is a two-year statute of 24 limitations for malpractice. He did mention that the 25 malpractice was committed within the estate of his mom</p>	<p style="text-align: right;">139</p> <p>1 ten minutes I can tell whether they're adverse to an 2 existing client, what the legal issue is, and whether I 3 can help them or not. I try to politely then shift the 4 conversation to the sad realities of the business of 5 law, whether you can afford us or not. When they can't 6 afford us, the conversation gets very short. And 7 that's what happened with my conversation with Eliot 8 Bernstein. It didn't last an hour. It didn't last a 9 half an hour. It lasted less than that. And it was 10 clear that while the facts are interesting, he was not 11 going to hire us. He didn't have the money to hire us. 12 He did not reveal any confidential information to me. 13 What he did say was that there was a malpractice case, 14 there was two matters involving mom and dad's estate, 15 and his focus was Don Tescher. 16 Q If you look at the letter that you wrote 17 Mr. Bernstein declining to represent him, what's the date 18 of that? 19 A September 24, 2013. 20 Q So Friday, the 20th, was -- is the date on 21 Exhibit 2. And by the following Tuesday, the 23rd, you 22 sent him a letter declining to represent him? 23 A (witness nods head). Yes. 24 Q Okay. Did -- 25 A Was September 24th a Monday?</p>
<p style="text-align: right;">138</p> <p>1 or his dad. We didn't talk about removing Ted as 2 trustee. What he told me was, he had been calling up 3 lawyers and he couldn't find anyone to take his case. 4 And that he had called me -- and what he wanted to know 5 was, do you have a conflict with Don Tescher? Will you 6 sue Don Tescher? I said, I don't have a conflict with 7 Don Tescher. I know the gentleman, but he's not a 8 friend. I don't do any business with him. So I was 9 open to that. Mr. Bernstein later contended that I 10 asked for a \$200,000 retainer. I have never in my life 11 asked for a \$200,000 retainer. I hope to get there one 12 day, but I'm not there just yet. Our standard 13 retainer -- and we don't even use the word retainer -- 14 it's initial fee, it's \$15,000. When Mr. Bernstein -- 15 Eliot Bernstein -- to his credit -- told me that he 16 couldn't afford to pay us and he wanted this on some 17 type of a contingency, the conversation got short very 18 fast. Our firm receives literally sometimes dozens of 19 calls a month. And if I listen to everyone's story and 20 read every single document that they want us to read, I 21 would have no time to practice law. So I have a 22 practice, I have a custom, I have a procedure, I do not 23 spend a lot of time on the phone with a prospective 24 client. I give them up to 30 minutes free of charge 25 and that's it. The reason for that is within five to</p>	<p style="text-align: right;">140</p> <p>1 Q Friday the -- if you look -- 2 A Friday was the 20th, Saturday was the 21st, 3 Sunday is the 22nd, Monday is 23rd. So this went out a 4 Tuesday, September 24th. So if Candice communicated 5 with Michelle on September 20th, I probably spoke with 6 Eliot on Monday or Tuesday because I remember my -- my 7 immediate reaction to Michelle, who does my intake, 8 was, there is nothing here to represent. We are not 9 representing Eliot Bernstein, he can't afford us. 10 Q Could you just describe generally the nature of 11 your law practice? 12 A Yeah. We handle estate litigation and 13 administration. Predominantly restricted to estates, 14 trusts, guardianships, wills, inheritances. That's all 15 we do. 16 Q Are you aware that our law firm does not do 17 trusts and estate administration work? 18 A Yes, that's why you called on me. You 19 originally went to another lawyer, but he was 20 conflicted out, and that's why you've asked our firm to 21 assist Ted Bernstein with the administration of trusts 22 and estates. 23 Q Before you agreed to become the lawyer for Ted 24 Bernstein in this case, did you undertake, in your view, 25 a thorough and detailed analysis of your ethical duties</p>

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1 that might be owed to Mr. Eliot Bernstein as a
 2 prospective client?
 3 A I did. I did that twice. I mean, I did it
 4 when you contacted me and I met with Mr. Bernstein
 5 subsequently to our initial meeting, which was on a
 6 Sunday. That's the procedure and that's the
 7 investigation that I conducted with Michelle in my
 8 office. And then subsequently I filed a motion to have
 9 Mr. Ted Bernstein appointed as curator. Within 48
 10 minutes I received an e-mail from Eliot Bernstein
 11 saying, hey, Pankauski, you can't represent Ted. I'm
 12 going to disqualify you. When that happened, I went
 13 back to Michelle and I said we need to discuss this
 14 again. We re-examined everything that I've already
 15 described. I found no e-mails from Ted Bernstein or
 16 Candice Bernstein. I felt -- I found no confidential
 17 information. I found no documents that were -- excuse
 18 me -- I found no documents that were Eliot Bernstein's.
 19 The only documents that Eliot Bernstein provided were
 20 someone else's that had been shared with others, like
 21 wills and trusts. I, again, came to the conclusion
 22 that my representation of Ted Bernstein would not
 23 violate any duty that I owed a prospective client; such
 24 as, Eliot Bernstein. I reviewed 4-1.18. I called the
 25 ethics hotline of the Florida Bar. I also did a

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1 Westlaw search for cases and authority regarding this
 2 issue.
 3 Q You mentioned an e-mail you received from
 4 Mr. Bernstein. Do you have a copy of that with you?
 5 A I do. There's two of them.
 6 Q May I approach, Your Honor?
 7 A I've got a February 10th, 2014 from Eliot
 8 Bernstein to me at 5:52 p.m.
 9 Q Do you have more than one copy of that?
 10 A There should be a few copies there. Oh, you
 11 know what, I have the extra copy.
 12 So on Monday, February 10th, 2014, Eliot
 13 Bernstein's --
 14 Q Before you do that, what number are we up to,
 15 6?
 16 A This would be --
 17 THE COURT: Six.
 18 MR. ROSE: Can we mark this as 6 for
 19 identification, Your Honor?
 20 (Thereupon, Exhibit Number 6 was marked
 21 for identification)
 22 THE COURT: Yes.
 23 BY MR. ROSE
 24 Q Is this an e-mail you received from Eliot
 25 Bernstein on February 10th?

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1 A Yes, 2014.
 2 MR. ROSE: I move this into evidence, Your
 3 Honor?
 4 THE COURT: Any objection?
 5 MR. FEAMAN: No objection.
 6 THE COURT: Okay. Number 6.
 7 (Thereupon, Exhibit Number 6 was marked in
 8 evidence)
 9 BY MR. ROSE
 10 Q If you look at Exhibit Number 6, Mr. Pankauski,
 11 this was received by you at 5:52 p.m. on February 10th?
 12 A Yes.
 13 Q And if you turn to the Page 2, it appears to be
 14 in response to a letter you sent Mr. Bernstein on
 15 February the 10th at 5:06 p.m.?
 16 A Yes. The letter was, I believe, the motion
 17 to appoint Ted Bernstein as curator.
 18 Q Forty-six minutes later you get this e-mail
 19 from Mr. Bernstein?
 20 A Yes.
 21 Q And in response to receiving this e-mail you
 22 undertook the second investigation you just told us
 23 about?
 24 A Correct.
 25 Q Are there things in this e-mail that you find

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1 to be inaccurate?
 2 A Yes. There's a number of them. In his
 3 second line, he says I -- the end of the first line,
 4 beginning of the second line -- I sent you over private
 5 and confidential, highly sensitive information. He
 6 didn't. He never communicated with me. He didn't send
 7 over any confidential information. He didn't send me
 8 anything. His wife Candice sent some of Simon and
 9 Shirley's wills and trusts to Michelle in my office.
 10 He also said we've had, quote, several correspondences
 11 on the phone, close quote. We didn't. Candice called
 12 Michelle. I spoke with Eliot Bernstein one time. He
 13 thinks it was in the evening, it was in the afternoon
 14 before the sun was setting. He said there was a series
 15 of e-mails with you. That's inaccurate. Eliot
 16 Bernstein never sent an e-mail to me, nor did Candice.
 17 And several members of your office. Inaccurate. He --
 18 his wife, Candice, sent e-mails to Michelle who handles
 19 my intake. He also said -- he says, complete removal
 20 of any papers filed in conflict -- strike that. He
 21 says, I'm uncertain how you can forget our meetings.
 22 We never had any meetings. We had one phone
 23 conversation for less than 30 minutes. He says, that
 24 you even told me and Candice once you reviewed the
 25 volumes of materials sent to you. I never spoke with

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1 Candice. He didn't send me volumes of material. He
 2 sent Michelle those four or five documents that
 3 Mr. Eliot Bernstein previously identified when he
 4 testified.
 5 Q Did you ever agree to review the materials he
 6 sent you?
 7 A No.
 8 Q Did you, in fact, ever review the materials he
 9 sent you?
 10 A I did not.
 11 Q Once you sent the letter on February 24
 12 declining to represent him, you took no further action?
 13 A Correct.
 14 Q I didn't mean to interrupt you, you can
 15 continue, if you see anything else in the letter.
 16 A Yes. He says you also proposed a retainer of
 17 \$200,000. I've never proposed a retainer of \$200,000.
 18 Our retainers -- our standard retainer is \$15,000.
 19 Q You asked Mr. Bernstein that question today and
 20 he denied that he indicated you demanded the \$200,000
 21 retainer?
 22 MR. FEAMAN: Object to form. Repetitive.
 23 THE COURT: Sustained.
 24 BY MR. ROSE
 25 Q Anything else in the letter that's inaccurate?

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1 A Just a moment, please. He said, I informed
 2 you I would be working on raising those monies to
 3 retain you. Absolutely not. He never told me that.
 4 He said he didn't have the money. That's why the
 5 conversation got cut short. That's why we sent him the
 6 September 24, 2013 letter saying we don't represent
 7 you. He said -- he references your promise of
 8 confidentiality. I've never made a promise of
 9 confidentiality to anybody. And I certainly didn't
 10 make any promise of confidentiality to Mr. Eliot
 11 Bernstein.
 12 Q Did you respond to Mr. Eliot Bernstein's
 13 e-mail?
 14 A I did.
 15 Q May I approach. I --
 16 A I responded to him on February 11th, the next
 17 day, I believe, just before 6 p.m. And that's
 18 reflected on a two-page document that's in front of me.
 19 And then Mr. Eliot Bernstein responded to that response
 20 on Wednesday, February 12, 2014.
 21 MR. ROSE: I would move this in evidence as
 22 Exhibit 7, Your Honor.
 23 THE COURT: Any objection?
 24 MR. FEAMAN: No objection.
 25 MR. ROSE: Would you like a copy, Your Honor?

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1 THE COURT: Yeah, I would.
 2 MR. ROSE: I apologize for not having the
 3 prior one.
 4 (Thereupon, Exhibit Number 7 was marked in
 5 evidence)
 6 BY MR. ROSE
 7 Q So 5:23 on February 11th, the day after you
 8 received the e-mail from Mr. Bernstein, you wrote him and
 9 indicated that you disagreed with his objection to you?
 10 A I did. I said, I disagree with the substance
 11 and content of your e-mail. My firm intends to remain
 12 as counsel to your brother, Ted.
 13 Q You received a response from Eliot Bernstein
 14 the following day at 3:07 in the afternoon?
 15 A Yeah. And you know who he cc'd on that?
 16 Crystal Cox, the blogger.
 17 Q I guess he cc'd Crystal L. Cox and Crystal L.
 18 Cox at liquidating trustee?
 19 A Yes.
 20 Q Have you ever heard that name before?
 21 A No.
 22 Q Have you seen information about you published
 23 on the Internet?
 24 A I have. Nothing --
 25 MR. FEAMAN: Objection, relevancy.

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1 THE COURT: Yeah. Sustained.
 2 THE WITNESS: I have never known --
 3 THE COURT: Sustained. I sustained the
 4 objection. Next question.
 5 BY MR. ROSE
 6 Q Are there any inaccuracies in Mr. Bernstein's
 7 e-mail to you dated February 12 at 3:07, which is in
 8 evidence as Exhibit 7?
 9 A Yes. His first line of his e-mail of
 10 Wednesday, February 12, 2014 to me, he says, I think
 11 applied to our discussions, plural, to retain your
 12 firm. We didn't have discussions. Candice spoke to my
 13 intake person. I spoke with Eliot once, for less than
 14 a half an hour. He talks about the transfer of highly
 15 confidential sensitive information and strategies. I
 16 discussed no trial strategy with Eliot Bernstein. I
 17 know that when a prospective client calls up, that my
 18 responsibility and custom and practice is to take in a
 19 minimum amount of facts to determine whether I can
 20 provide assistance to that client or not. Trial
 21 strategies comes later. Eliot Bernstein did not share
 22 any trial strategies with me or any litigation
 23 strategies with me. He says, I believe we had several
 24 phone calls with you directly and others with your
 25 staff. That's inaccurate. There were not several

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1 phone calls. He had one call with me. Then he says,
 2 including several lengthy conversations between my wife
 3 and your employees. And, again, a large amount of
 4 information and strategies were given to members of
 5 your office as well. Entirely inaccurate. His wife
 6 sent my intake person copies of Shirley's and Simon's
 7 estate planning documents. There was no large amount
 8 of information. He didn't speak with any employees
 9 other than me once. I don't think he even spoke with
 10 Michelle, I think that was Candice. Again, he says I
 11 promised him confidentiality. I didn't do that.
 12 And that concludes my testimony about this
 13 e-mail, Exhibit 7.
 14 THE COURT: You need to really move it along,
 15 we're going to run out of time.
 16 THE WITNESS: Okay.
 17 BY MR. ROSE
 18 Q Did you have a conversation with Mr. Feaman
 19 outside of the courtroom yesterday at the judge's
 20 request?
 21 A I did. And I have my notes that I took
 22 contemporaneous with that conversation.
 23 MR. FEAMAN: Objection, relevancy.
 24 THE COURT: Well, hold on.
 25 MR. FEAMAN: Materiality.

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1 THE COURT: Well, the only thing right now is
 2 the answer that he took notes. I don't even know
 3 what the next question is, so let's wait.
 4 MR. ROSE: I'll mark this as Exhibit 8 -- may
 5 I approach?
 6 THE COURT: Okay. I don't want to see notes
 7 yet.
 8 BY MR. ROSE
 9 Q Are these notes you took yesterday in
 10 discussion with Mr. Feaman?
 11 MR. FEAMAN: I object to any testimony
 12 concerning notes that he took in a conversation
 13 that you requested us to have out in the hall
 14 yesterday, Your Honor.
 15 THE COURT: Okay. So objection sustained.
 16 MR. FEAMAN: Can I just proffer?
 17 THE COURT: That was not for the purpose of
 18 using that conversation as something to fully
 19 regurgitate either side's idea of what was said.
 20 It wasn't recorded. It was not in my presence.
 21 There was no court reporter there. The purpose
 22 was to be informal, so that we'd be able to
 23 determine whether this hearing was necessary.
 24 So objection sustained.
 25 BY MR. ROSE

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1 Q In what capacity do you represent Ted
 2 Bernstein?
 3 A I represent him in his fiduciary capacity.
 4 Ted Bernstein is the trustee of his dad Simon's rev
 5 trust. He's the PR of his mom's estate. He's the
 6 trustee of his mom's trust.
 7 THE COURT: I got to write this down.
 8 THE WITNESS: Sorry, Your Honor.
 9 THE COURT: Trustee of Simon's.
 10 THE WITNESS: Simon's trust.
 11 THE COURT: Okay.
 12 THE WITNESS: Personal representative of
 13 Shirley's estate, trustee of Shirley's trust.
 14 THE COURT: Okay.
 15 THE WITNESS: And he's seeking to be
 16 appointed as personal representative of Simon's
 17 estate.
 18 THE COURT: Okay. Got it.
 19 BY MR. ROSE
 20 Q Do you represent Mr. Bernstein individually in
 21 any matters?
 22 A I do not.
 23 Q Do you anticipate representing Mr. Bernstein
 24 individually in any matters?
 25 A I do not.

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1 Q Are you familiar with the estate plan of
 2 Shirley Bernstein and Simon Bernstein?
 3 A Yes.
 4 Q Do you want to -- can you tell us the short
 5 version of how you --
 6 A Eliot doesn't inherit. I mean, you gave
 7 me --
 8 MR. FEAMAN: Objection, relevancy.
 9 THE COURT: Well, it goes to the issue of
 10 whether Eliot is an interested person under 731.
 11 So that's relevant.
 12 MR. FEAMAN: Okay. Go ahead.
 13 THE WITNESS: Eliot doesn't inherit under
 14 Simon's estate plan. You provided those documents
 15 to me, it's my understanding that his mom and dad
 16 provided for him outside of those estate plans
 17 through the use of trusts and gifts.
 18 THE COURT: You folks really need to wrap it
 19 up. I want to try to finish this and then,
 20 depending on what I rule, deal with the other
 21 issue, so you can have some direction from me. So
 22 time is of the essence.
 23 BY MR. ROSE
 24 Q You feel you have learned anything from -- from
 25 your one telephone conference with Eliot Bernstein in any

<p style="text-align: right;">153</p> <p>1 way compromises his position or materially disadvantages 2 him when you will be representing Ted as the beneficiary 3 in these matters? 4 A Absolutely not. 5 Q Do you anticipate there being some litigation 6 in this trust? 7 A Yeah, I do, on the trust. Not necessarily 8 the estate. In the trust. I think that Ted is going 9 to file a dec action and ask Judge Colin for 10 instructions on how property under the trust should be 11 distributed or not distributed. 12 Q And as counsel, is it your intention to file a 13 dec action and follow the instructions of the court? 14 A Absolutely. 15 MR. ROSE: I have nothing further, Your 16 Honor. 17 THE COURT: All right. Mr. Feaman. 18 MR. FEAMAN: I'll try to be as brief as I 19 can. 20 THE COURT: Okay. Thanks. 21 CROSS EXAMINATION 22 BY MR. FEAMAN 23 Q If I understood your testimony, Mr. Pankauski, 24 are you taking the position that there is a difference 25 between documents received by your office that you didn't</p>	<p style="text-align: right;">155</p> <p>1 Q Now, the -- you actually spoke to this 2 particular prospective client, correct? 3 A Yes. 4 Q And you would agree with me that Mr. Eliot 5 Bernstein was, in fact, a prospective client, correct? 6 A Yes. 7 Q Okay. You said the focus was on Don Tescher. 8 But could you take a look at Exhibit 3? 9 A Sure. 10 Q That's your rejection letter right there? 11 A Yes. 12 Q The reference makes no reference to 13 Mr. Tescher, does it? It says, Estate of Shirley 14 Bernstein and Estate of Simon Bernstein, correct? 15 A Yes. 16 Q Only. And the documents that you received, 17 which are shown on Exhibit 2, which was the e-mail from 18 Candice Bernstein to Michelle of your office -- by the 19 way, how long has she worked for you? 20 A Oh, Michelle has been with us probably three 21 to four years. 22 Q Okay. And you received documents that included 23 the Shirley Bernstein trust, the Shirley Bernstein will, 24 back to 2008, correct? 25 A Michelle from my law office received those</p>
<p style="text-align: right;">154</p> <p>1 see and, therefore, you didn't see those documents? Are 2 you making a distinction? 3 A Yeah. The only distinction I'm making is in 4 the testimony from Mr. Eliot Bernstein; he said that he 5 sent me documents. He didn't. His wife sent documents 6 to my intake person. 7 Q All right. And so you are taking the position 8 that, therefore, you didn't see them? 9 A No, my position is I didn't read them. There 10 is no therefor. I didn't read those documents that he 11 sent -- that Candice sent to my intake person. 12 Q You don't deny your office received them? 13 A No, not at all. 14 Q And you are familiar, I would assume, with Rule 15 of Professional Conduct 4-5.3 (c) which states that 16 although paralegals or legal assistants may perform the 17 duties delegated to them by the lawyer without the 18 presence or active involvement of the lawyer, the lawyer 19 shall review and be responsible for the work product of 20 paralegals or legal assistants? You would agree with 21 that, correct? 22 A For existing clients, absolutely. Not for 23 prospective clients. There is no duty on my behalf to 24 review any number of things that come in from dozens of 25 prospects.</p>	<p style="text-align: right;">156</p> <p>1 documents on Exhibit 2. 2 Q Okay. And the Simon Bernstein Amended Trust of 3 2012, correct? 4 A Yes. 5 Q Have you now seen the Simon Bernstein original 6 trust? Before it was allegedly amended in 2012? 7 A The 2008? 8 Q I don't know. 9 A Yeah, when you say original, I don't know 10 what you mean by that. 11 Q Okay. 12 A I looked at Mr -- 13 Q The trust which this amendment purportedly 14 amends? 15 A I don't know if I've looked at it. I've 16 looked at Simon Bernstein's trust that Mr. Rose gave 17 me, I believe it's the 2012 document. 18 Q Now, you said you were familiar with the estate 19 plan. And all of the documents that are listed here 20 would be necessary documents that would make you familiar 21 with the estate plan, correct? 22 A Necessary, no. I believe the 2012 trust 23 amendment revokes all prior amendments, which would 24 make prior ones a non-issue. 25 Q There is also documents here that have no</p>

<p style="text-align: right;">157</p> <p>1 relationship to the -- as far as you can tell -- the 2 estate plan, like the Bernstein Holdings, LLC? 3 A I don't think that's accurate. It's my 4 understanding from Ted Bernstein and Mr. Rose that 5 Bernstein Holdings, LLC was an entity that Simon 6 created to own a house that Eliot lives in. So where 7 Eliot lives, that's actually owned by an LLC created by 8 his dad, Simon. And the members of the LLC are three 9 trusts. So I think that's all part of Simon's estate 10 plan, you know, that's one way he helped out Eliot. 11 Q By your cross-examination of Mr. Eliot 12 Bernstein, when you asked about whether he had asked Ted 13 Bernstein for money, that would be money that would be 14 due either Eliot Bernstein's children or Eliot Bernstein 15 through those trusts, correct? 16 A I don't know if they're due through that 17 trust. It's my understanding the residence that Eliot 18 lives in is owned in the LLC, which is responsible for 19 paying the real estate taxes, the maintenance and 20 everything like that. I think Eliot Bernstein asked 21 the trustees of those trusts for money and they've run 22 out of money, so he asked Ted for more money. 23 Q And the LLC is, in fact, the Bernstein 24 Holdings, LLC? 25 A Yes.</p>	<p style="text-align: right;">159</p> <p>1 Bernstein. 2 Q So even though you didn't learn about it then, 3 they still sent to you the Bernstein Holdings, LLC for a 4 reason I guess you have no idea, is that right? 5 A Yeah. I don't know why Eliot's wife, 6 Candice, sent Michelle Bernstein Holdings, LLC other 7 than she wanted someone to review them. 8 Q That's certainly -- I'm sorry, I don't mean to 9 interrupt -- 10 A That's all right, you're doing a great job. 11 You know, when prospective probate clients call you, 12 they won't do a document dump. They want to open up, 13 they want to talk to you for hours, and they want you 14 to read everything in the world. We don't do that. We 15 don't have the time or the patience to do it. 16 Q You would agree with me that the Bernstein 17 Holdings, LLC certainly has nothing to do with the 18 malpractice action against Don Tescher, isn't that 19 correct? 20 A I wouldn't say absolutely, no. I'm not 21 trying to be evasive. I don't think that's an element 22 of the purported malpractice by Tescher and Spallina. 23 Q Okay. Thanks. 24 A Sure. 25 THE COURT: All right.</p>
<p style="text-align: right;">158</p> <p>1 Q Correct? 2 A Yes. 3 Q Okay. And you received those documents back in 4 September, correct? 5 A Michelle did, yes. 6 Q Okay. And you are aware that there is a 7 dispute over payments from the LLC from Mr. Ted Bernstein 8 to Mr. Eliot Bernstein, correct? You asked about it on 9 cross-examination? 10 A There is a dispute over payments to the LLC. 11 Q Payments from the LLC to either Mr. Eliot 12 Bernstein or his kids or for the support of the house? 13 A You're confusing the LLC with the trust. 14 Q Okay. So the trust should be making payments 15 to the Bernstein Holdings, LLC, is that your 16 understanding? 17 A No. Eliot wants money from Ted individually 18 and Ted as trustee of either Shirley or Simon's trust. 19 And Shirley and Simon's trust don't permit 20 distributions to Eliot. 21 Q You first found out about the issue -- that 22 dispute between Mr. Eliot Bernstein and Mr. Ted Bernstein 23 about the money when you spoke to him in September of 24 2013, didn't you? 25 A No, I learned about it from Alan Rose and Ted</p>	<p style="text-align: right;">160</p> <p>1 MR. FEAMAN: Okay. 2 MR. ROSE: Two questions? 3 THE COURT: Yes, that's it. 4 RE-DIRECT EXAMINATION 5 BY MR. ROSE 6 Q Bernstein Family Realty is not a beneficiary of 7 the estate, the will, the trust, is that correct? 8 A That's correct. 9 Q Absolutely nothing to do with what proceedings 10 are going to be before Judge Colin, as far as you know? 11 A Absolutely correct. 12 MR. ROSE: Thank you, Your Honor. 13 THE COURT: Okay. Have a seat. 14 THE WITNESS: Thank you, Your Honor. 15 THE COURT: Any other witnesses on your end? 16 MR. PANKAUSKI: No, Your Honor. 17 THE COURT: Okay. I have just a question. 18 In the estate case, where you're representing Ted, 19 that's the one where Mr. Feaman you're 20 representing the creditor, correct? 21 MR. FEAMAN: Yes. 22 THE COURT: Eliot is representing himself. 23 Okay. I'll let you do this, Mr. Feaman. What's 24 pending in that case now, anything? Other than 25 the motion to appoint a curator.</p>

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1 MR. FEAMAN: In the estate itself?
 2 THE COURT: Yeah.
 3 MR. FEAMAN: I am only aware of the motion to
 4 appoint Ted Bernstein as the --
 5 THE COURT: PR.
 6 MR. FEAMAN: -- personal representative.
 7 THE COURT: Okay.
 8 MR. FEAMAN: But I have not reviewed the
 9 file.
 10 THE COURT: All right. And so is there an
 11 action filed with respect to Simon Bernstein's
 12 trust?
 13 MR. PANKAUSKI: No -- I'm sorry.
 14 MR. FEAMAN: Not yet.
 15 THE COURT: All right. Okay. Have a seat.
 16 Can I see the motion that --
 17 Mr. Pankauski -- that you filed on behalf of
 18 Ted to be appointed PR and the motion that asks
 19 for -- and I think it was both counsel,
 20 including Mr. Glasko -- for a curator instead.
 21 MR. PANKAUSKI: Yes, Your Honor.
 22 THE COURT: Let me see those physically.
 23 MR. PANKAUSKI: This is my motion for
 24 appointment. And I can get you the response in
 25 opposition.

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1 THE COURT: Okay. I remember seeing the
 2 response, but -- okay. So here's -- everyone
 3 finished, ready for me to rule? I'm ready to rule
 4 on everything.
 5 MR. FEAMAN: The only thing I would add, Your
 6 Honor, would be the case that we faxed to you
 7 earlier today, and to everybody else, Metcalf v.
 8 Metcalf, 785 So. 2d. 747, which states, quote, in
 9 considering whether the attorney-client privilege
 10 applies to disqualify an attorney from opposing a
 11 former client, the focus is on the perspective of
 12 the person seeking out the lawyer, not on what the
 13 lawyer does after the consultation.
 14 THE COURT: Okay. I agree that's the law.
 15 All right. So -- yes.
 16 MR. GLASKO: Judge, are you making a ruling
 17 on the appointment of curator today?
 18 THE COURT: I am. I'm doing it in like about
 19 a minute or two.
 20 MR. GLASKO: I would like to ask the court --
 21 because we wanted to lodge an ore tenus objection
 22 to that. And I think the court needs --
 23 THE COURT: Why?
 24 MR. GLASKO: -- the court needs to hear some
 25 information with regard to Ted's ability to be

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1 appointed as personal representative.
 2 THE COURT: Well, hear what I'm going to do,
 3 and then you'll see if you want to do that.
 4 MR. GLASKO: Yes, sir.
 5 THE COURT: Okay. Motion to disqualify is
 6 denied.
 7 The burden is on Eliot. And I'm treating
 8 this as really being Eliot's motion to show
 9 that he's an interested person under 731.20.
 10 He has not carried that burden. And so that
 11 would disqualify him from being someone who has
 12 an interest in trying to stop Mr. Pankauski
 13 from representing Ted.
 14 And, you know, I agree with the law that
 15 counsel -- Mr. Feaman just cited. This is
 16 really a view of Eliot from a subjective point
 17 of view as to -- as a prospective client of
 18 Mr. Pankauski, now that Mr. Pankauski is
 19 venturing to represent Ted, which is a
 20 subsequent representation. Mr. Pankauski is
 21 barred from representing Ted if there are
 22 interests that -- in the estate -- that
 23 materially -- that are materially adverse to
 24 those of Eliot, and the rest of the rule. I
 25 find that Eliot has not carried his burden of

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1 proof on that, even from a light most favorable
 2 to him, which I'm giving him.
 3 So motion to disqualify denied.
 4 Ted's motion for appointment of himself as
 5 curator or administrator ad litem, denied.
 6 William Stansbury and -- your client is
 7 who?
 8 MR. GLASKO: Excuse me, my client is Lisa and
 9 Jill.
 10 THE COURT: Okay. Are they -- are they a
 11 moving party in a formal sense?
 12 MR. GLASKO: They are the children of the
 13 decedent, Judge.
 14 THE COURT: But have they filed -- I don't
 15 have all the paperwork, I want to make sure I
 16 do -- have they filed requesting a -- that there
 17 be a curator other than Ted.
 18 MR. GLASKO: No, sir, I've only made an ore
 19 tenus motion.
 20 THE COURT: The ore tenus motion is denied
 21 only -- not on the merit because I'm not doing
 22 this -- but I don't have to because William is an
 23 interested person, able to, as a secured creditor,
 24 who does have an interest under the case law and
 25 under the statute in having this estate, which is

<p style="text-align: right;">165</p> <p>1 Simon Bernstein's estate administered, taking 2 himself as a creditor into consideration. 3 That motion is granted. 4 So you are going to have the following 5 choices: Within x days, you'll tell me, in a 6 moment, you're going to tell me how much time 7 you, Pankauski, Feaman, Glasko, need, to tell 8 me who you want as curator. If that person is 9 a lawyer, the fees are capped at \$350 an hour 10 and cannot exceed \$5,000 in any increment 11 without coming before the court and telling me 12 why I should raise that cap incrementally. 13 We're putting a cap on this situation. 14 Okay. So you may need to make sure you 15 can find someone who is willing to serve in 16 that capacity. 17 If you can't agree on someone, Pankauski, 18 you're going to write two names out; Feaman, 19 you're going to write two names out; 20 Mr. Glasko, you'll write two names out on a 21 little piece of paper. We're going to put them 22 in a jar and you three will come in on UMC 23 after -- if you, unfortunately, can't agree 24 upon someone, my judicial assistant will come 25 out, and in your presence, shake the jar and</p>	<p style="text-align: right;">167</p> <p>1 into something that is not or shouldn't be. 2 Okay. So who's going to write up orders? 3 MR. FEAMAN: As to two of the motions, I 4 believe your ruling was that -- just that they 5 were denied, and I have blank orders on that. 6 That would be the order on the verified motion to 7 disqualify counsel. And it says the motion of 8 Eliot Bernstein. 9 THE COURT: Okay. 10 MR. FEAMAN: Because -- 11 THE COURT: But you can do it for reasons I 12 mentioned on the record. So if someone -- 13 MR. FEAMAN: For reasons mentioned on the 14 record. 15 THE COURT: Yeah, that's a good way of doing 16 it. That way you don't have to start recreating 17 it. I gave reasons on there. 18 MR. FEAMAN: And then I have a blank order on 19 a motion for appointment of curator or 20 administrator ad litem, which you denied, by Ted 21 Bernstein. 22 THE COURT: Okay. That's denied. 23 MR. FEAMAN: And then the other order on 24 Mr. Stansbury -- not sure how much detail you want 25 to get in there.</p>
<p style="text-align: right;">166</p> <p>1 pick. So I'll have nothing to do with the 2 actual person because it will be someone that 3 one of the three of you picks. They all -- the 4 only way that that won't work out is if one of 5 the people you pick are obviously not 6 qualified, but I assume that's not going to be 7 the case. 8 So you need to -- if we go that route, on 9 the two names that each side of the three sides 10 are going to pick, make sure that they are 11 willing to serve in advance. 12 Okay. The reason I don't want Ted is 13 because under 733.501 I take a position that 14 given where this case is, and the hype that -- 15 we're achieving a disconnect between what 16 should be involved and what could be a sensible 17 straightforward estate administration on the 18 estate portion of the case -- because that's 19 all that's before me right now. And not get 20 carried on into a whole bunch of other things 21 that aren't yet before me or not yet filed. 22 So we're going to take this in nice small 23 steps. This order applies to the estate case 24 because there is no other case before me. 25 So we're not going to let this blossom</p>	<p style="text-align: right;">168</p> <p>1 THE COURT: Well, you're going to enter that 2 order once you folks talk now. Okay. 3 MR. FEAMAN: Okay. 4 THE COURT: Right now. And Eliot is 5 included in that conversation of whether you can 6 agree upon someone. Because, I mean, I am not 7 suggesting that you, you know, you can't, but you 8 should be able to. I mean, especially -- and you 9 may want to say here's name one, here's name two, 10 here's name three, just to make sure that the 11 people that you now talk about will accept the 12 assignment. Then don't give me the order yet. Go 13 actually speak to these people, make sure they 14 accept, and then under the conditions that I'm 15 mentioning. And then we're going to go from 16 there. And then you put the name in the order. 17 Okay? 18 MR. PANKAUSKI: Yes, Your Honor. 19 THE COURT: Understand? 20 MR. PANKAUSKI: Understood. 21 THE COURT: All right. Understand, Eliot? 22 MR. ELIOT BERNSTEIN: Yes, sir. 23 THE COURT: Okay. Great. So speak now. I'm 24 going to stay, but I'm going to ask you to 25 start -- go outside because we need to kind of</p>

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1 close the court -- but I'm going to stay here and
2 let the lawyers and Eliot come back in to tell me
3 what you've agreed to.

4 Okay. Thanks.

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6 (Thereupon, the proceedings
7 were concluded at 5:03 p.m.)
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1
2 CERTIFICATE
3

4 THE STATE OF FLORIDA
5 COUNTY OF PALM BEACH.

6
7 I, DAVID L. MARSAA, Professional Reporter,
8 State of Florida at large, certify that I was
9 authorized to and did stenographically report the
10 foregoing proceedings and that the transcript is a
11 true and complete record of my stenographic notes.

12 Dated this 5th day of July, 2014.
13
14

15
16 _____
17 DAVID L. MARSAA, COURT REPORTER
18
19
20
21
22
23
24
25

<p style="text-align: center;"><u>§</u></p> <p>\$15,000 138:14 145:18</p> <p>\$200,000 98:2 99:19 138:10,11 145:17,20</p> <p>\$350 165:9</p> <p>\$5,000 165:10</p> <hr/> <p style="text-align: center;"><u>0</u></p> <p>09/13 107:8</p> <hr/> <p style="text-align: center;"><u>1</u></p> <p>1 50:15 105:10 106:18 109:6,7 112:1,10 116:1 132:9 136:16,25</p> <p>1.18 73:8</p> <p>1.9 73:8</p> <p>108 50:15,16</p> <p>10th 82:21 91:25 92:21 95:5 98:15,18 99:17 105:7 108:23 142:7,12,25 143:11,15</p> <p>113 50:17</p> <p>118 50:18</p> <p>11th 146:16 147:7</p> <p>12 89:24 146:20 148:7,10</p> <p>120 49:9</p> <p>125 50:19</p> <p>1267 58:19</p> <p>129 50:5</p> <p>12th 92:1,21 105:15</p> <p>131 50:8</p> <p>141 50:20</p> <p>142 50:19,20</p> <p>152 50:9</p> <p>159 50:8</p> <p>17345 49:20</p> <p>19 48:24 105:25 108:17 109:1,5 137:2</p> <p>1-9 73:8</p> <p>1985 65:15</p> <p>1988 59:12</p> <p>19th 51:6</p>	<p>105:17,23 137:9</p> <hr/> <p style="text-align: center;"><u>2</u></p> <p>2 50:16 51:4 58:19,20 107:8 109:10,13 115:20,25 119:20,22 136:16 137:2 139:21 143:13 155:17 156:1</p> <p>2:30 48:25 51:6</p> <p>20 93:25 105:22 109:11 137:3</p> <p>200 51:4</p> <p>2003 136:9</p> <p>2008 106:25 107:1,5,6,9 155:24 156:7</p> <p>2009 59:12</p> <p>2012 61:8 93:25 101:5 107:6,7 118:22 156:3,6,17,22</p> <p>2012CP004391 51:11</p> <p>2013 65:12 103:19 104:2,12 105:22,25 107:8 109:2,11 110:13 111:4 114:11 118:23,24 119:8 130:20 136:15 137:2,3 139:19 146:6 158:24</p> <p>2014 48:24 51:7 108:23 142:7,12 143:1 146:20 148:10 170:12</p> <p>20th 81:12 105:16 137:4,10 139:20 140:2,5</p> <p>21st 140:2</p> <p>22nd 140:3</p> <p>23 136:9</p> <p>23rd 139:21 140:3</p> <p>24 110:13 111:4 114:6,11 136:15 139:19 145:11 146:6</p> <p>24th 139:25 140:4</p> <p>26 119:5</p> <p>2753 49:2 78:13</p> <p>2d 58:19 162:8</p>	<hr/> <p style="text-align: center;"><u>3</u></p> <p>3 50:17 114:15,18 132:9 136:7 137:22 155:8</p> <p>3:07 147:14 148:7</p> <p>30 138:24 144:23</p> <p>33157 49:20</p> <p>33401 49:7,10</p> <p>33434 49:3</p> <p>33436 49:15</p> <p>34th 49:2 78:13</p> <p>3615 49:15</p> <hr/> <p style="text-align: center;"><u>4</u></p> <p>4 50:18 66:7 105:11 106:18 114:24 115:2 116:12 119:10,11 121:2 131:19</p> <p>4-1.18 52:3 53:20 59:13,15 60:10,14,20 66:5,8 67:12 73:22 77:9,25 141:24</p> <p>4-1.7 58:24 65:4</p> <p>4-1.8 56:20 64:17 65:16 66:2</p> <p>4-1.9 56:21 58:21 59:14 60:11,14,18,19 64:12,17 67:23 69:22</p> <p>4-5.3 154:15</p> <p>48 141:9</p> <hr/> <p style="text-align: center;"><u>5</u></p> <p>5 50:19 126:5,8 130:10</p> <p>5:03 48:25 169:7</p> <p>5:06 143:15</p> <p>5:23 147:7</p> <p>5:52 142:8 143:11</p> <p>502012CP004391XXX XSB 48:2</p> <p>505 49:6</p> <p>529 58:19</p> <p>5th 170:12</p> <hr/> <p style="text-align: center;"><u>6</u></p>	<p>6 50:20 89:24 142:15,18,20 143:6,7,10 146:17</p> <p>600 49:6</p> <hr/> <p style="text-align: center;"><u>7</u></p> <p>7 146:22 147:4 148:8 149:13</p> <p>7:10 137:5</p> <p>701 49:9</p> <p>731 152:10</p> <p>731.20 163:9</p> <p>733.501 166:13</p> <p>747 162:8</p> <p>74-page 115:8</p> <p>77 50:5</p> <p>785 162:8</p> <hr/> <p style="text-align: center;"><u>8</u></p> <p>8 150:4</p> <p>86 50:6</p> <hr/> <p style="text-align: center;"><u>A</u></p> <p>ABA 53:23</p> <p>ability 162:25</p> <p>able 51:19 150:22 164:23 168:8</p> <p>above-styled 51:2</p> <p>absolute 54:15</p> <p>absolutely 146:3 153:4,14 154:22 159:20 160:9,11</p> <p>accept 168:11,14</p> <p>accepted 111:23</p> <p>accountings 91:3</p> <p>accurate 54:22 121:13 157:3</p> <p>achieving 166:15</p> <p>acting 101:18</p> <p>action 56:9 57:6 61:1 101:12,21 110:19 137:22 145:12 153:9,13 159:18 161:11</p> <p>actions 79:15,17 84:5</p> <p>active 154:18</p> <p>acts 102:3</p> <p>actual 77:16</p>
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXSB

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

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PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: MAY 23, 2014

TIME: 9:00 a.m. to 10:00 a.m.

1 APPEARANCES:

2

3 APPEARING ON BEHALF OF WILLIAM STANSBURY:

4 MR. PETER M. FEAMAN, ESQ.

MR. JEFFREY T. ROYER, ESQ.

5 PETER M. FEAMAN, P.A.

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7

8 APPEARING OF BEHALF OF TED BERNSTEIN:

9 MR. ALAN ROSE, ESQ.

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11

12 APPEARING ON BEHALF OF FOUR ADULT GRANDCHILDREN:

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16 APPEARING AS THE CURATOR:

17 BENJAMIN BROWN, ESQ.

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19

20 APPEARING PRO SE:

21 ELIOT BERNSTEIN

22

23

24

25

1

2 BE IT REMEMBERED, that the following
3 proceedings were taken in the above-styled cause
4 before Honorable MARTIN COLIN at the Palm Beach
5 County Courthouse, 200 West Atlantic Avenue, in the
6 City of Delray Beach, County of Palm Beach, State of
7 Florida, on Friday, the 23rd day of May, 2014, to
8 wit:

9

10 THE COURT: Good morning. Let me get my
11 computer on. We're here in the Bernstein case.
12 Appearances.

13 MR. BERNSTEIN: Eliot Bernstein, pro se.

14 MR. FEAMAN: Peter Feaman on behalf of
15 William Stansbury. And from my office, Jeff
16 Royer.

17 MR. MORRISSEY: John Morrissey on behalf
18 of four of the adult grandchildren.

19 MR. ROSE: Alan Rose on behalf of Ted
20 Bernstein.

21 MR. BROWN: Ben Brown as curator of the
22 estate.

23 THE COURT: All right. What do we have
24 for today?

25 MR. ROSE: Before we get to that, I have

1 one -- sort of an important issue that came up
2 last night.

3 THE COURT: Go ahead.

4 MR. ROSE: It will take 30 seconds.

5 Ted Bernstein sent me an email. And he
6 replied to an email, and accidentally the email
7 went to Eliot Bernstein. It was
8 attorney-client privileged communication
9 directly to me from my client Ted Bernstein.
10 The email went to Eliot Bernstein. Under Rule
11 1.285 I sent to Mr. Eliot Bernstein an email
12 immediately asking him to delete or return the
13 privileged materials.

14 I discussed the issue with Mr. Eliot
15 Bernstein this morning and he advised me that
16 he has emailed the document to 2,000 people.

17 He's had a history of posting things on
18 the internet. Because it's attorney-client
19 privileged information it's very sensitive and
20 I'd request the Court to instruct him to comply
21 with Rule 1.285. It was a reply to an email
22 that had a bunch of names and accidentally it
23 went to him. Mr. Bernstein advised me
24 immediately and I advised Eliot immediately.

25 THE COURT: Mr. Bernstein, did you get an

1 email from counsel?

2 MR. BERNSTEIN: I did not get his email.
3 I got an email from my brother addressed to me
4 only. I read it, as usual when I get something
5 bizarre that's attacking and threatening me, or
6 whatever. It was from Ted Bernstein to Eliot
7 Bernstein.

8 THE COURT: It was from --

9 MR. BERNSTEIN: Ted Bernstein to Eliot
10 Bernstein.

11 THE COURT: Not from the lawyer?

12 MR. BERNSTEIN: No. He misrepresents
13 everything.

14 THE COURT: We'll take it up at the end.
15 There's other things scheduled. If you
16 remember, we'll take it up.

17 MR. ROSE: Fine.

18 THE COURT: Go ahead.

19 MR. FEAMAN: May it please the Court.
20 Peter Feaman, Your Honor, on behalf of William
21 Stansbury, interested person in the estate.

22 This is Mr. Stansbury's petition for the
23 appointment of an administrator ad litem which
24 has been submitted to Your Honor together with
25 a supplement to the petition to the requested

1 relief.

2 We're asking this Court to appoint
3 Mr. Stansbury as an administrator ad litem of
4 the estate for the sole purpose of making an
5 appearance on behalf of the estate in some
6 litigation that is currently pending in
7 Illinois involving a life insurance policy on
8 Simon Bernstein's life, the deceased, with a
9 death benefit of \$1.7 million.

10 That litigation has been pending for over
11 a year from what I can tell, or about a year.
12 And it has not involved the estate which is
13 very interesting because the documents that
14 I've recently obtained since the filing of our
15 motion, Your Honor, we found out that insurance
16 policy, according to internal records of the
17 insurance company, is actually owned by the
18 deceased Simon Bernstein. So arguably not only
19 is it an asset of the estate, that insurance
20 policy, and the proceeds therefrom, but any
21 litigation concerning the distribution of those
22 proceeds should be in this court, Your Honor.

23 Now that's jumping ahead. But the point
24 is that we're dealing with an asset of the
25 estate and, therefore, this court has every

1 interest in seeing that the estate's assets are
2 marshaled. The first step for that, Your
3 Honor, would be to appoint an administrator ad
4 litem to at least intervene in that federal
5 court action that's up in Illinois.

6 The former personal representatives of
7 this estate, Your Honor, were doing everything
8 they could to keep the money out of the estate
9 from that life insurance policy. They have
10 alleged that the beneficiary is the life
11 insurance trust. The problem is nobody can
12 find the original life insurance trust. Nobody
13 can find even a copy of the life insurance
14 trust. And the records that we show show that
15 the beneficiaries are not, in fact, a life
16 insurance trust. But the first beneficiary,
17 according to Heritage, which is the insurance
18 company, is LaSalle National Trust. The second
19 beneficiary is the Simon Bernstein Trust,
20 whatever that is. But it's not the Simon
21 Bernstein Irrevocable Insurance Trust that is
22 being alleged up in Illinois.

23 Now if there's no clear beneficiary, as
24 Your Honor is aware, then the life insurance
25 proceeds would go to the estate and become an

1 asset, or liquid assets for the estate. Now
2 that money presently has been put into the
3 registry of the court up in Illinois by the
4 insurance company. They were first requested
5 by the personal representatives of this estate,
6 the former, to pay it to others. And the
7 insurance company said we don't have any
8 documentation to justify that. So they just
9 impleaded the funds.

10 The litigation has been pending, and
11 despite the fact that the estate is the owner
12 of the policy, the estate has never been
13 represented in that action. Now the estate has
14 a high probability of success, we believe, in
15 this case. Because if they're going to try to
16 establish a lost instrument without the
17 original or without a copy it's going to be
18 based, I assume, on oral testimony from people.
19 And that is a high burden. Interestingly we
20 found out at first, on this so-called insurance
21 trust, Mr. Spallina (phonetic), who was the
22 personal representative, formerly, of this
23 estate, represented to the insurance company
24 that he was the trustee of this insurance
25 trust. When that didn't work, Your Honor -- we

1 have a document that we'll show to the court up
2 in Chicago -- when that didn't work they're now
3 in court up there saying that Mr. Ted Bernstein
4 is the trustee, or successor trustee, of that
5 insurance trust. Yet there is no copy of that
6 trust before the court in any fashion. The
7 plaintiffs in that lawsuit are now not only the
8 insurance trust, the so-called insurance trust,
9 it's now all the adult children of Mr. Simon
10 Bernstein. Interestingly enough, Your Honor
11 the adult children are not beneficiaries of
12 this estate, Your Honor. It's the ten
13 grandchildren who are the residual
14 beneficiaries as a result of the pour-over
15 provision of the will that leaves all the
16 liquid assets in a trust. The beneficiaries of
17 that trust are the ten grandchildren. So the
18 adults, the adult children of Mr. Simon
19 Bernstein, have every incentive, Your Honor, to
20 see that the estate is not inherited with these
21 life insurance proceeds because if they succeed
22 in this action in Illinois then the adult
23 children inherit or receive the proceeds of the
24 life insurance not the ten grandchildren over
25 whom you have jurisdiction as the beneficiaries

1 in this estate.

2 The curator, Your Honor, has no objection.

3 Mr. Brown --

4 THE COURT: Let me stop and hear from Mr.
5 Brown. What's your position on their motion?

6 MR. BROWN: I'm not taking a position on
7 the motion, Your Honor. I can get into it
8 further, I don't really want to interrupt
9 Mr. Feaman. But it would seem to me that if
10 the main estate creditor wants to try to
11 intervene in Chicago on behalf of the estate to
12 bring assets into the estate without looking to
13 the estate for current payment of his fees, in
14 other words, if he finally succeeds then he can
15 then come back to this Court and ask to have
16 his fees reimbursed, then that would seem to be
17 a benefit to the estate as far as marshaling
18 the assets of the estate and, of course, the
19 curator and/or personal representative has a
20 duty to the creditors also to try to marshal
21 the assets of the estate.

22 THE COURT: I got your position.

23 Mr. Rose?

24 MR. ROSE: Our position is pretty simple.

25 And I -- this is an evidentiary hearing --

1 THE COURT: It's an opening to tell me
2 what's going on. I just want your position.

3 MR. ROSE: Tetra (phonetic) and Spallina,
4 who were the prior PRs, believe that the claim
5 to the insurance policy by the estate had no
6 merit because of their discussions with their
7 client, because of their investigation of
8 facts. These people have no evidence to
9 support -- they have no parol evidence. This
10 is a fight over an insurance policy that only
11 beneficiary -- there's no dispute that the
12 beneficiary the insurance company has on
13 record, there was a prior beneficiary which was
14 a company pension plan that the company is
15 dissolved, and that's out -- the only
16 contingent beneficiary, and there's an
17 affidavit that's been filed attached to one of
18 their motions in this Court where the insurance
19 company says the only other beneficiary ever
20 named was the Simon Bernstein Irrevocable Life
21 Insurance Trust. There's a shorthand in a
22 computer system, where somebody shorthanded it
23 in the computer, and the affidavit in the
24 insurance company addressing that which says
25 that's shorthand, but in our forms the only

1 beneficiary ever listed is this irrevocable
2 life insurance trust, their only piece of
3 evidence supporting their claim is that the
4 insurance trust cannot be found. But the trust
5 did exist. It has a tax ID number from -- a
6 federal tax ID number. There's numerous
7 references to it between different lawyers and
8 nobody can find the trust document now. That's
9 an issue that's going to be resolved in
10 Illinois. But they have no evidence -- other
11 than the fact that the trust doesn't exist --
12 they don't have any parol evidence. They don't
13 have any documents. They don't have anything
14 on behalf of the estate.

15 Our concern is they're going to spend the
16 precious few estate assets that are remaining
17 to go to Illinois and fight an issue that has
18 no merit, can subject the estate to a claim,
19 you know, for fees or indemnification or
20 prevailing party attorney's fees award.

21 The policy was owned by Simon Bernstein.
22 That means it's included in his taxable estate.
23 But it does not mean it's owned in his probate
24 estate. The beneficiary is the beneficiary.
25 The policy proceeds are in Illinois. They've

1 been deposited into the court --

2 THE COURT: What's the issue that the
3 Illinois judge is being asked to decide?

4 MR. ROSE: Being asked to decide, among
5 competing claims, to the proceeds of this race.
6 Eliot Bernstein is there asserting the exact
7 position that Mr. Stansbury wants to go there
8 to assert. Eliot is asserting that the money
9 should go to the estate and not the irrevocable
10 life insurance trust. That issue is going to
11 require, you know, a summary judgment or a
12 trial with parol evidence to determine who the
13 beneficiary is of that policy.

14 Mr. Stansbury has gone there to intervene
15 and was denied by the judge the right to
16 intervene in the case already once.

17 Our main concern really is twofold. The
18 expense on both -- what's actively being spent.
19 We want to make sure no estate funds are being
20 expended to pursue this. In an estate that
21 has a very limited amount of funds here --

22 THE COURT: Mr. Feaman says that his
23 client will not seek fees for his role as
24 administrator ad litem unless and until a
25 recovery might take place and then he'll make

1 an application with funds then available,
2 meaning the \$1.7 million would then apparently
3 come into the estate.

4 MR. ROSE: I haven't heard testimony to
5 that effect yet.

6 THE COURT: That's a representation.

7 MR. ROSE: He'd also need to represent
8 that he would indemnify and hold the estate
9 harmless if there's any adverse action as a
10 result of him intervening in that case and
11 losing either an award of attorneys fees or --

12 THE COURT: I'm not sure about that part
13 yet. I got your position.

14 MR. ROSE: And then the final point is
15 Mr. Stansbury is a potential creditor of the
16 estate. To the extent he goes and -- even if
17 he would win that lawsuit and bring money into
18 the estate I don't think it's fair to let him
19 get a -- I don't know what his fee arrangement
20 would be.

21 THE COURT: I'd hear that. Under the
22 statute he has to prove that he provided a
23 benefit to the estate.

24 MR. ROSE: We don't even know if his claim
25 will still exist --

1 THE COURT: It may or may not.

2 Mr. Morrissey?

3 MR. MORRISSEY: To address first the last
4 point why should Mr. Stansbury not be allowed
5 to act even though his fees may or may not come
6 at the end. Well, he's a claimant. He's not a
7 creditor. There's a distinction here. As a
8 claimant he might not be privy, or should not
9 be privy, to certain information because he
10 doesn't have a judgment. He's not one of the
11 eight classes of people. If he's allowed to
12 intervene as a claimant in the Illinois action
13 he may, in fact, become privy to certain
14 information that we, or the estate, does not
15 want him to become privy to because we may end
16 up having to negotiate with a claimant to
17 satisfy a claim. We don't want him privy to
18 certain information. We don't want him
19 intervening in actions, and certainly in
20 actions that he's already sought intervention
21 and been denied.

22 THE COURT: Was he denied because he
23 didn't have standing because he hadn't been
24 appointed as an administrator? Is that the
25 reason why he was denied?

1 MR. MORRISSEY: He attempted to intervene
2 individually and was denied. He was denied
3 because -- I've attached the order. I filed an
4 opposition and attached the order. And I can
5 read from a couple of sections of the order to
6 indicate and let Your Honor know why he was
7 denied.

8 THE COURT: Hold on. I see it here.

9 MR. MORRISSEY: The court there went
10 through an extensive analysis, legal standard
11 and analysis in its order speaking of
12 intervention as a right, and permissive
13 intervention. And the court said, "The fact
14 that you might anticipate a benefit from a
15 judgment in favor of one of the parties to a
16 lawsuit, maybe, for example, you're a creditor
17 of one of them, does not entitle you to
18 intervene in their lawsuit." That is really
19 the position that Mr. Stansbury is in. The
20 court went on, "Here Stansbury's claimed
21 interest is merely an economic interest that is
22 too remote for purposes of the rule because the
23 estate is not a party to this lawsuit. And
24 Stansbury does not assert that he or the estate
25 are beneficiaries to the life insurance

1 proceeds nor the Bernstein Trust."

2 THE COURT: You represent, Mr. Morrissey,
3 who?

4 MR. MORRISSEY: I represent the four
5 grandchildren.

6 THE COURT: Who, according to Mr. Feaman,
7 may benefit if this money comes to the estate?

8 MR. MORRISSEY: Correct.

9 THE COURT: So the way the case is being
10 litigated now -- is the only plaintiff the
11 Simon Bernstein Irrevocable Insurance Trust vs.
12 the life insurance company?

13 MR. MORRISSEY: Well --

14 THE COURT: That's the way the style of
15 the case is. Are there more plaintiffs than
16 that?

17 MR. FEAMAN: They amended subsequently and
18 joined the adult -- four of the five of the
19 adult children were joined as plaintiffs.

20 THE COURT: And who is representing them?

21 MR. FEAMAN: Somebody up in Chicago in
22 that action.

23 THE COURT: Okay.

24 MR. ROSE: I think technically the lawsuit
25 was started by the trust against the insurance

1 company. The insurance company filed an
2 interpleaded, probably by counterclaim. My
3 understanding is, subject to someone correcting
4 me, the insurance company was granted
5 interpleader. They put the funds in the
6 registry of the court. The insurance company
7 is out of the case and even though you have the
8 original style what's left is people asserting
9 a claim to the proceeds.

10 Eliot is there, I think, advocating the
11 claim on behalf of the estate --

12 THE COURT: Eliot is pro se. I want -- we
13 recognize that. From Mr. Morrissey's point of
14 view, do you take a position that your clients,
15 the grandchildren, may have an interest in
16 these monies?

17 MR. MORRISSEY: No -- well, our position
18 is the following --

19 THE COURT: That question first.

20 MR. MORRISSEY: Our position -- no, on
21 behalf of the four grandchildren.

22 THE COURT: You waive any -- on behalf of
23 those children you waive any claim to that
24 money?

25 MR. MORRISSEY: I'm not going to waive on

1 the record.

2 THE COURT: You have to stand on one side
3 of the fence or the other on that.

4 MR. MORRISSEY: Quite honestly, I haven't
5 asked them that question. I can't waive
6 something on behalf of my clients when I
7 haven't asked them that question point blank.

8 THE COURT: All right. So you have -- who
9 -- the Simon Bernstein Irrevocable Trust is
10 represented by Chicago --

11 MR. BERNSTEIN: Adam Simon who is the
12 brother to David Simon who is married to my
13 sister Pam Simon who stands to benefit if the
14 money goes through Illinois.

15 THE COURT: Illinois counsel, okay. And
16 the four children are represented by one
17 lawyer?

18 MR. FEAMAN: That's Adam Simon.

19 THE COURT: Because of the impleading of
20 the funds the battle right now is between the
21 trust and these four children because those are
22 the parties that are now competing for the
23 money?

24 MR. ROSE: I don't think -- I don't know
25 if the four children are technically parties.

1 I think they're just -- the battle I think is
2 between Eliot who is asserting that these funds
3 should come into this estate --

4 THE COURT: Eliot was allowed to
5 intervene?

6 MR. BERNSTEIN: I got sued in the case,
7 Your Honor, because they had gone behind my
8 back to try to steal this policy -- around you
9 too -- and they were told by the insurance
10 company, when Robert Spallina submitted what I
11 allege is a fraudulent insurance claim, and
12 they were told by the insurance company that
13 the claim was denied and they needed a probate
14 court order from you to approve the beneficiary
15 scheme they were proposing using some mashugana
16 lost trust --

17 THE COURT: Eliot, you're named as a
18 cross-plaintiff, so you are --

19 MR. BERNSTEIN: Now I've somehow become a
20 plaintiff -- a defendant that you showed me
21 last week, or two weeks ago, when you handed me
22 that order. I haven't quite figured out how
23 I'm the named defendant.

24 Your Honor, I'm representing their -- my
25 children's interests.

1 THE COURT: Hold it. I'm reading
2 something. I see a entity in the style of the
3 case up there called the Simon Bernstein Trust,
4 N.A. What's that? Is that something different
5 than the Simon Bernstein Irrevocable Trust?

6 MR. ROSE: It's in the affidavit that was
7 filed, I think attached to Mr. Brown's recent
8 petition for instructions, but... In the
9 insurance company's computer they shorthanded
10 the name of the trust. The beneficiary is the
11 Simon Bernstein Irrevocable Life Insurance
12 Trust which is the --

13 THE COURT: Ted Bernstein is an individual
14 in this suit now. And who is representing him?

15 MR. ROSE: I don't know that he is an
16 individual. If he's an individual he's
17 represented by Adam Simon.

18 THE COURT: I'm reading it. That's where
19 I get it. They're individually and/or as
20 purported trustee of the irrevocable trust.
21 Eliot is a cross-plaintiff -- that's where
22 you're named, Eliot -- vs. Ted, individually
23 and as trustee of the irrevocable trust. And
24 then a bunch of other people and entities are
25 cross-defendants. Right now the competing

1 parties in Illinois are the irrevocable trust
2 and Eliot. Is that basically it --

3 MR. ROSE: Yes.

4 THE COURT: -- who are active; is that
5 true?

6 So the question is should the claimant be
7 declared here an administrator ad litem for the
8 purposes of being permitted to ask the court to
9 be able to intervene, which the court may or
10 may not do?

11 MR. ROSE: There's one other part of my
12 opening I missed on my notes --

13 THE COURT: Go ahead. Sure.

14 MR. ROSE: Mr. Morrissey touched on it and
15 reminded me. If you're going to appoint an
16 administrator ad litem it should not be
17 Mr. Stansbury. You can appoint somebody and
18 Mr. Stansbury could fund it, he could pay the
19 expenses of, let's say, Mr. Brown or an
20 independent person to hire a Chicago lawyer
21 and, you know, advance the case. But you would
22 then be preserving issues of privilege and you
23 would be preserving the integrity of the system
24 rather than have Mr. Stansbury, who is a
25 claimant, who is adverse on multiple levels to

1 the estate, as the active person he would be
2 funding the litigation and, in my view, he
3 should be required to indemnify. But you'd
4 have a neutral third person doing it rather
5 that Mr. Stansbury which I think makes a lot
6 more sense.

7 THE COURT: What do you say about the
8 latter comment? That's the only one I want you
9 to address.

10 MR. FEAMAN: The fact that Mr. Stansbury
11 will become privy to confidential information
12 --

13 THE COURT: Well, we're not at --

14 MR. FEAMAN: Ben Brown --

15 THE COURT: -- I'll allow someone else to
16 intervene to appropriately determine whether
17 the estate has an interest in this money or
18 not. That's the issue, correct?

19 MR. FEAMAN: Yes.

20 THE COURT: All right. Right now the
21 person technically doing that is Eliot who
22 tries his best as a pro se. But it's pretty
23 tough --

24 MR. FEAMAN: That's right. He doesn't
25 represent the estate.

1 THE COURT: He represents himself
2 individually. So someone who may look for the
3 interest of the estate. And, you know, these
4 type of litigation, obviously, the Illinois
5 judge is going to have to take evidence -- I'm
6 not going to do that in my hearing -- on who
7 the beneficiary is of this policy. That's what
8 has to be determined.

9 MR. FEAMAN: That's correct.

10 THE COURT: The issue is narrow and I
11 think everyone agrees with that.

12 MR. FEAMAN: And --

13 THE COURT: What I'm thinking about is
14 you kind of want to be able to make sure that
15 everyone who, perhaps, could ultimately be a
16 beneficiary of this policy have a voice in that
17 litigation. That's the due process part of it.
18 So my thought is, having heard everybody say
19 what they said, I rarely find it to be a
20 problem allowing someone to intervene -- unless
21 they're a stranger, this wouldn't be a
22 stranger -- because a voice is a good thing to
23 have. We allow interventions all the time here
24 on my cases. I just hear from someone else.
25 They don't win or lose unless there's merit to

1 them. Someone right now is hovering the
2 position that the Simon Bernstein Irrevocable
3 Trust is the beneficiary. They're lawyered up.
4 The only other person that seems to suggest
5 that that may not be the case and it is the
6 estate that's the beneficiary is Eliot. So I'm
7 considering having someone other than Eliot --
8 or in addition to Eliot, because he's there
9 individually on behalf of himself and he's not
10 representing the estate -- someone represent
11 the interest of the estate.

12 And so the proposal is that that be
13 someone funded by your client, Mr. Feaman, but
14 not -- but someone who is more neutral like Mr.
15 Brown or something like that. What do you say
16 about that?

17 MR. FEAMAN: We came up with Mr. Stansbury
18 because if he's the one that's willing to fund
19 the intervention and to fund the person -- the
20 lawyer -- to make sure that the estate is going
21 to be protected --

22 THE COURT: He has more -- he's like
23 Eliot. He has his own interests, personal
24 interest.

25 MR. FEAMAN: He does. He has interests in

1 money coming into the estate, absolutely.

2 THE COURT: But someone who is more
3 neutral may be the right move there. If that's
4 where I'm going on this, what is your position
5 on that?

6 MR. FEAMAN: If that's where you're going
7 on that then Ben Brown is acceptable in that
8 regard. I would just -- since Mr. Stansbury is
9 the one that's volunteering, if you will, to
10 fund initially the cost of this, then he needs,
11 through me, some input with Mr. Brown.

12 THE COURT: Sure.

13 MR. FEAMAN: On all matters.

14 THE COURT: You'd be allowed to have input
15 with him. But Mr. Brown would be there,
16 assuming he's willing to take the assignment,
17 to preserve issues of confidentiality and other
18 concerns that could exist. He sounded, all
19 along, from the beginning, as the perfect
20 centerpiece to do this. What do you say?

21 MR. BROWN: Actually, I -- a few things to
22 say, Your Honor. The first thing is with
23 regard to the privilege issue. I'm not aware
24 of any privilege that would apply.

25 THE COURT: And I'm not either. But let's

1 get past that point.

2 MR. BROWN: The testamentary exception,
3 this is squarely in the testamentary exception,
4 so there is no privilege in my view of this.

5 THE COURT: Okay.

6 MR. BROWN: The second issue is that I
7 promised David Simon, I've given to you before,
8 this email thread where he sent me an email and
9 said you're trying to have Mr. Stansbury
10 appointed as administrator ad litem, the estate
11 should not be appearing in Illinois, you're
12 going to be wasting estate assets and you have
13 a conflict of interest because you're the
14 curator and the estate pours over into the
15 revocable trust and the beneficiaries of the
16 revocable trust don't want this policy to go to
17 the estate. I've been accused of conflict of
18 interest. I've been accused of breaches of
19 fiduciary duty already by David Simon who,
20 apparently, is Adam Simon's brother and the
21 father of some of the grandchildren.

22 My third issue is that, I think it's from
23 the Vietnam War, this comes within the category
24 of mission creek. I'm supposed to be temporary
25 interim limited curator. There's supposed to

1 be a personal representative appointed at some
2 point. I've been asked by the parties to
3 consider being the personal representative.
4 Frankly, Your Honor, this case is -- goes off
5 in a lot of different directions. Whoever the
6 personal representative is going to spend a lot
7 of money just dealing with the different
8 parties and the different people who are
9 involved. And, frankly, I don't know that I
10 have the time. And I really don't want to be
11 the personal representative.

12 THE COURT: Okay.

13 MR. BROWN: If I'm appointed administrator
14 ad litem it seems like I'm in there for the
15 long run on a federal case. They do move them
16 pretty quickly here in the Southern District of
17 Florida. I know that from experience. I don't
18 know about the Northern District of Illinois.

19 MR. FEAMAN: Well, there's been -- I can
20 answer that question.

21 THE COURT: Okay.

22 MR. FEAMAN: There's been a notification
23 of a docket entry entered by the judge on -- it
24 said that all case dispositive motions are to
25 be filed by mid-July, July 13. So it sounds

1 like we're on a rocket docket to me, Your
2 Honor.

3 And on behalf of Mr. Stansbury I would
4 like to, since he is running the cost, be able
5 to work with whomever it is to pick counsel up
6 in Chicago. And that -- and to review
7 counsel's bills from Chicago and to help
8 strategize with that counsel the best way to
9 proceed up there should Your Honor go that
10 direction.

11 THE COURT: All right. So let me ask this
12 question: Is there also before me a petition
13 to appoint or determine a PR?

14 MR. FEAMAN: Not today.

15 THE COURT: Not today, okay.

16 MR. BROWN: Your Honor, I don't know if
17 that's set for hearing at all. Although I
18 request that it be set for hearing. The other
19 issue with a PR versus a curator is that
20 Mr. Stansbury has active litigation going on in
21 front of Judge Blanc right now. So far there
22 hasn't been any conflict as far as Ted
23 Bernstein and the estate defending against
24 Mr. Stansbury's claim, but there have been
25 multiple instances where people in this case,

1 in this room, basically, have said that there
2 could eventually be a conflict of interest
3 because there could be some finger pointing in
4 cross claims.

5 THE COURT: It's hard to purify a case
6 like this and not have it -- not have a
7 situation where it's allegation free of a
8 purported conflict of interest. But it just
9 sounds logical that if -- especially when I'm
10 looking at the latest heading out of the case
11 in Illinois -- if this is, in its simplest
12 form, a dispute as to who the beneficiary of
13 this life insurance policy is, I mean that's a
14 -- that's kind of a narrow hearing. We do
15 those types of things in state court. You
16 know, you need some discovery. And then you
17 present the evidence and the judge makes a
18 decision. Kind of like the way you do in
19 contract cases. And so the parties who claim
20 to be beneficiaries of the policy seem to be
21 Simon Bernstein's Irrevocable Trust and their
22 representative. I'm treating Simon Bernstein
23 Trust as the same party for the purpose of this
24 discussion. Eliot, individually, he's there.
25 And no one who may have a voice to say I want,

1 on behalf of the estate, because there's no PR.
2 If there's a PR the PR would take care of that.
3 Especially where Mr. Stansbury is willing to
4 front the cost of the fees for that up front it
5 sounds beneficial to have that voice.

6 So I'll put it this way, Mr. Brown, I
7 would expand your curator duties, if you're
8 willing, to take the assignment. If not, we
9 got to go elsewhere. It's up to you.

10 MR. BROWN: The curator duties basically
11 to just effectively be the party who's
12 intervening using Mr. Stansbury's counsel?

13 THE COURT: No. You would be the party.
14 You would hire a lawyer. You're allowed to,
15 like in any other case, you and your lawyer can
16 hear, because your phones work and your emails
17 work, from anyone else including Mr. Feaman and
18 Mr. Rose and Mr. Morrissey, and anyone else can
19 stick their two sense in. That's the way
20 litigation goes. But it seems to be that this
21 isn't an issue that's a finger-pointing issue.
22 This is who the beneficiary of the policy is.
23 The judge is going to look at the documents and
24 either say it's clear on its face or else take
25 parol evidence and we're on our way. This

1 isn't a personal type of litigation. And so,
2 you know, the strategies are legal strategies
3 that would be in charge of you and the lawyer
4 you hire.

5 MR. BROWN: I understand that, Your Honor.
6 Basically what you just described is something
7 that Mr. Stansbury could very easily do and pay
8 for himself.

9 THE COURT: Right. But he's -- but I
10 don't want him to be the party to do that
11 because I think there's -- he's a claimant.
12 There's -- I'm not comfortable there.

13 MR. BROWN: Okay.

14 THE COURT: And, you know, you're the
15 neutral person looking out for the estate's
16 interest. He has -- he's not -- he's looking
17 out for the estate's interest but in a
18 different manner. So hypothetically if you
19 went up into the litigation and you got
20 convinced by looking at everything you looked
21 at, you and your lawyer, that the beneficiary
22 was the Simon Bernstein Irrevocable Insurance
23 Trust, whatever that is, and not the estate,
24 you have a duty to argue in good faith. You
25 follow what I'm saying? That's where the

1 neutrality part comes in. But you are more
2 advocating, primarily, to the estate at --
3 that's the assignment.

4 MR. BROWN: I understand that, Your Honor.
5 But -- and I know there's a lot of buts here --
6 the estate has about 6 to \$700,000 worth of
7 assets, that includes the jewelry.

8 THE COURT: Remember, I'm having
9 Mr. Stansbury pay.

10 MR. BROWN: Oh, you are having Mr.
11 Stansbury, okay.

12 THE COURT: That was the deal.

13 MR. BROWN: And just using his counsel
14 that he already has retained and already tried
15 to intervene with?

16 THE COURT: No. No. You pick the lawyer.
17 He pays.

18 MR. BROWN: Your Honor, I will do it
19 subject to whatever personal representative is
20 appointed going ahead and taking over --

21 THE COURT: Ultimately if we get to the
22 stage where there's a PR taking the place of
23 you, that would be different. This is -- let
24 me just tell you, I mean a couple of reasons
25 why I think that works is Mr. Brown has worked

1 with me as curator in a lot of cases. I mean I
2 haven't had one challenge to the reasonableness
3 of the fees ever. He keeps control of the
4 lawyers. You know, and he does really a good
5 job there. So I really, you know, I can't
6 think of a better person to deal with this
7 issue given everyone's competing interest.
8 He'll be fair on what he argues on behalf of
9 the estate. He's not going to run up fees.
10 He's not going to allow the lawyer to run up
11 fees. If you want, I don't think he should be
12 the lawyer probably because I don't think he's
13 admitted in Illinois --

14 MR. BROWN: No.

15 THE COURT: -- and he'll be able to best
16 determine how to filter whatever the
17 information is that other counsel want to give
18 to them. Again, it's a narrow issue. Okay,
19 everyone is jumping up.

20 MR. MORRISSEY: If I could respond on
21 behalf of four of the grandchildren. We're now
22 talking about having to pay, you know, from my
23 client's perspective pockets, Mr. Brown's fees,
24 an attorney up in Illinois --

25 THE COURT: I just said that won't be the

1 case.

2 MR. MORRISSEY: That could potentially be
3 the case.

4 THE COURT: It would only be the case if
5 there was a recovery for the estate to which
6 then Mr. Stansbury would say, under the
7 statute, I performed a benefit for the estate.
8 How could that not benefit -- and from what I'm
9 told your clients, the grandchildren, would be
10 the people who would benefit from that. So why
11 would you complain about that if that's what
12 wound up happening? There's not a dollar
13 coming out of the estate unless there's a
14 recovery basically, and then the recovery would
15 take place and he would seek some recovery of
16 fees.

17 MR. MORRISSEY: And he would seek that --

18 THE COURT: Here.

19 MR. MORRISSEY: Here?

20 THE COURT: Sure. You can say what I
21 think you're going to say, it's okay.

22 MR. MORRISSEY: I just want to go back to
23 the basics. The fact that the estate is only a
24 taker in default. So the estate doesn't need
25 to be represented in the Illinois action.

1 It's, for example, there was even talk, I
2 believe, in the Illinois case by one of the
3 banks or insurance companies that it's possible
4 if there's no beneficiary then the State of
5 Illinois could be the taker in default. Well,
6 the State of Illinois wasn't named as a party.
7 They don't have counsel there. Likewise, why
8 should the estate have counsel in an action
9 where they're only the taker of last resort?

10 THE COURT: Because if they're the taker
11 as a matter of law -- I mean -- I don't really
12 follow your argument because let's say there's
13 a hearing, which there will be, and the trust
14 is there, Eliot is there, and the estate is
15 there, and the judge hears it all and says the
16 decision is the beneficiary should be the
17 estate, would we say that that's a ridiculous
18 thing that we had the estate participate? I
19 don't think so.

20 MR. MORRISSEY: I don't know what -- I
21 mean there is no evidence that anyone on behalf
22 of the estate can present that they have ever
23 been named as a beneficiary --

24 THE COURT: That could be. It may be then
25 that once Mr. Brown and counsel intervene, see

1 the documents -- I mean you're not talking --
2 how many pages of documents could the
3 beneficiary forms be? It can't be that many.
4 When we sign our life insurance forms we sign a
5 page or two, that's about it. It's not like
6 it's going to be really exotic litigation.
7 This is a narrow, single issue who the
8 beneficiary is of this policy. You know, it
9 may be that it is clear that it's this
10 irrevocable trust and then they'll go from
11 there to see whether that really is an entity
12 that exists. That may be a separate issue. If
13 the judge says -- someone can name on the life
14 insurance policy, you know, the Star Spangled
15 Banner Fund and if that doesn't exist then we
16 know from contract law what happens if you name
17 a beneficiary that doesn't exist. You go to
18 the next level. You certainly want the life
19 insurance funds going somewhere. That's what
20 we would determine if that took place. Step 1,
21 step 2, step 3, doesn't sound to be that
22 complexed. Last word.

23 MR. ROSE: If I understand what you are
24 saying, which makes sense, Mr. Brown will keep
25 separate time for the time he spends as curator

1 working on the Illinois issue. He will hire
2 counsel and the fees of Mr. Brown and the
3 Illinois counsel, under his direction and his
4 discretion, would be paid by Mr. Stansbury?

5 THE COURT: That's the case. Subject to a
6 claim for reimbursement under the statute.

7 MR. ROSE: I'd want to hear from
8 Mr. Stansbury under oath that he's willing to
9 undertake that expense. Not to talk out of
10 school, but I haven't had discussion with
11 counsel and I didn't necessarily get the sense
12 that that was going to be the case.

13 THE COURT: All right. Well, Mr. Feaman
14 can represent them.

15 MR. FEAMAN: I am representing as an
16 officer of the Court, Your Honor.

17 THE COURT: Okay.

18 MR. FEAMAN: My only concern is if
19 there's -- basically Mr. Stansbury is funding
20 this there's -- there has to be some type of, I
21 don't want to use the word control, but real
22 input into the process.

23 THE COURT: Well, he's allowed to, like
24 anyone else in cases like this, you could have
25 conversations with Mr. Brown and his lawyer.

1 You can show them what documents there are.
2 You can ask them to discuss things with them.
3 And, you know, I mean they -- they obviously
4 know he has an interest. And to the extent
5 that they're comfortable I think it's
6 appropriate they'll discuss these things with
7 them.

8 MR. FEAMAN: On behalf of Mr. Stansbury, I
9 would like assurances.

10 THE COURT: I'm not going to -- I have to
11 keep the -- there's a line of demarcation I
12 don't want to cross up front.

13 MR. FEAMAN: And I'm not objecting that
14 it's not Mr. Stansbury. I just want to make
15 sure the person who --

16 THE COURT: The person who is appointed is
17 going to advocate for the estate.

18 MR. FEAMAN: Right. Agree with that.

19 THE COURT: But let me tell you this, the
20 reason I appoint a curator to do this is the
21 curator is not advocating for Mr. Stansbury.
22 He's advocating for the estate. There's times
23 when the curator could say, after doing
24 everything, I don't think, for example, the
25 estate has a bona fide interest. That may be

1 bad news for your side. But if that's what
2 they conclude then that's what they conclude.
3 If they conclude they do they will continue
4 advocating. It's things we do as lawyers all
5 the time. We go after cases with merit, and
6 shy away from those we think don't have merit.

7 MR. FEAMAN: Yes.

8 THE COURT: There's multilevel here. If
9 someone says that the Bernstein Irrevocable
10 Trust is the beneficiary but that it doesn't
11 exist there may be an argument that could be
12 made how then still as a result of that the
13 estate should get the funds, that would be
14 something that Mr. Brown and counsel could
15 consider advocating. But it's all in good
16 faith stuff.

17 MR. FEAMAN: Sure. I just want to make
18 sure --

19 THE COURT: You'll get copies of the
20 bills. You'll be able to see what's that. If
21 at anytime you think that Mr. Brown and the
22 lawyer are, you know, going way beyond what you
23 think they should, from an expense point of
24 view, you can always come back to me.

25 MR. FEAMAN: I'm less concerned with the

1 expense, although it is important, more with
2 being able to pick up the phone and speak to
3 counsel in Chicago and say, hey, have you
4 considered this, I have information that may
5 help your case.

6 THE COURT: I'm not going to micromanage
7 that part. Today if you want to call Mr. Brown
8 for this hearing, for example, and say, Mr.
9 Brown, this is what I think, what do you think,
10 you're allowed to have a discussion on that.
11 That happens all the time, doesn't it?

12 MR. BROWN: It does. It does with
13 everybody in the case, emails and phone calls.

14 THE COURT: You guys email between each
15 other like crazy now.

16 MR. BROWN: That's true. Your Honor, the
17 only -- as far as keeping my time, if I kept my
18 time at my rate as curator is Mr. Stansbury
19 supposed to pay for that, or is that still
20 payable by the estate?

21 THE COURT: Your time and the lawyer's
22 time are the only rate I approve --

23 MR. BROWN: Paid by Mr. Stansbury.

24 THE COURT: -- the hourly rate, I approve
25 of 350.

1 MR. BROWN: I also propose, it doesn't
2 have to go on the order, it would seem to me,
3 there's nothing wrong, once I retain a Chicago
4 attorney, there's nothing wrong with Mr. Feaman
5 calling that Chicago attorney and me telling
6 the Chicago attorney don't get me on the phone
7 --

8 THE COURT: I agree. There's no question.
9 You're the conduit.

10 MR. BROWN: As far as the claim, I'll
11 absolutely rely on Illinois counsel.

12 THE COURT: All right. I think this is
13 pretty clear how it's going to be handled.

14 Yes, sir.

15 MR. ROSE: A couple of minor concerns, I
16 think Mr. Brown went too far. Mr. Stansbury
17 would not pay for all the curator fees, only
18 the curator fees directly related to the
19 Illinois matter.

20 THE COURT: That's what he said. Separate
21 times sheets, sure.

22 MR. ROSE: I'm concerned if they -- he's
23 going to hire a Chicago lawyer, a Chicago
24 lawyer is going to be expensive. That's what
25 our main concern is --

1 THE COURT: Hold on. Mr. Brown --

2 MR. ROSE: He's a practical guy --

3 THE COURT: -- he's going to find a good
4 lawyer with a reasonable rate, and that's a
5 little higher. He's not going to hire a
6 \$1,000-an-hour-guy.

7 MR. ROSE: But if he hires a lawyer and
8 the bill is \$12,000 and Mr. Stansbury's counsel
9 looks at it and says we don't think we should
10 pay it, Mr. Brown is retaining the person on
11 behalf of the estate, we need to have not a
12 chance for them to complain about bills.

13 THE COURT: Okay. I'm not worried about
14 that now. There's too much -- I'm not finding,
15 you know -- I mean one -- part of this is what
16 I think is the sincerity of Mr. Feaman's side
17 here. And it's kind of a good thing that we
18 have the ability to be able to use
19 Mr. Stansbury's funds that way. They've made
20 the pledge to do it. I don't think they're
21 going to go back on their word.

22 MR. ROSE: I understand. I think
23 Mr. Stansbury should at least, under oath --

24 THE COURT: Your request is denied.
25 Mr. Feaman is an officer of the court. He

1 represents --

2 MR. ROSE: -- it would be enforceable as a
3 judgment if he doesn't pay -- the estate would
4 have a claim against Mr. Stansbury if he, for
5 example, didn't pay some invoices and we got
6 stuck paying the bill for a Chicago lawyer.

7 THE COURT: You want me to rule on that
8 now? Your answer is no. You're real premature
9 on that. Draft an order along the lines I
10 mention.

11 What else for today?

12 MR. BROWN: Your Honor, I had two motions
13 for instructions.

14 THE COURT: One had to do with this issue,
15 right?

16 MR. BROWN: That one I basically just took
17 a backseat to because of the administrator ad
18 litem motion.

19 The other, Eliot Bernstein sends me a lot
20 of emails with a lot of requests. I'm not
21 saying it's a bad thing. But he asks me
22 questions I don't necessarily know I can
23 answer. For instance, he got the accounting by
24 Tetra and Spallina and then sent me an email
25 that I've attached to the motion. I don't know

1 if you have the motion for instructions.

2 THE COURT: I do.

3 MR. BROWN: That had 44 different
4 questions, not including subparts, and asked
5 that I hire a forensic accountant, an analyst
6 and acquire account statements from a number of
7 third-party institutions.

8 THE COURT: Is that the motion? I don't
9 have the attachments. It says motion for
10 instructions -- that's the life insurance one.
11 Hold on.

12 MR. BROWN: It's not necessarily
13 important. Eliot is very thorough. But,
14 again, the estate has limited assets. My view
15 of what the curator should do with respect to
16 the accounting is not take the lead on
17 objecting to what Tetra and Spallina did,
18 investigating the underpinnings of the
19 accounting, that's up to -- we have a lot of
20 beneficiaries here who are very, very
21 passionate and interested in what's going on
22 with the estate.

23 THE COURT: Stop. You don't have to go
24 further. That position, that's the law. You
25 don't do that. If there's an accounting,

1 there's a rule on objections, the parties
2 object. They don't use you -- you don't work
3 for them.

4 MR. BROWN: Okay.

5 THE COURT: You work for the court.

6 MR. BROWN: I'll try and craft an order
7 that deals with that motion in that regard.

8 Also, there also was a motion, Eliot has
9 concerns about the 2012 will and its validity.
10 I think your ruling would be the same on that.
11 I don't have a role in trying to contest that
12 will --

13 THE COURT: Exactly. You're not an
14 advocate. You don't investigate things that
15 the parties may be interested in. They can do
16 what they think they need to do based on the
17 rules of procedure and statutes.

18 MR. BROWN: That's it.

19 MR. ROSE: If I may address the privilege
20 issue?

21 THE COURT: Okay. The privilege issue,
22 okay.

23 MR. ROSE: May I approach?

24 THE COURT: Yes.

25 MR. ROSE: I can file a copy of this.

1 This is the email in question. Without reading
2 the email, if you look at who it is addressed
3 to at the very top. Mr. Bernstein is saying,
4 this is Ted, telling me he sent it to Eliot by
5 mistake. Last night at 10:12 he got off an
6 airplane and wanted to tell me things. It's to
7 Eliot by accident. If you just read --

8 THE COURT: When you say to Eliot by
9 accident, the only person this is sent to is
10 Eliot.

11 MR. ROSE: Correct. He was trying to send
12 it to me. If you look below the word analysis,
13 the first word of the email is Alan.

14 THE COURT: So this was is supposed to go
15 to you and it went to Eliot?

16 MR. ROSE: By mistake. And Mr. Bernstein
17 has advised me this morning he sent it to 2,000
18 people already. He plans on publicizing it --

19 THE COURT: I'm sure he didn't do that
20 because if he wants to participate in the case
21 he's obligated to have and comply with the
22 rules of court.

23 MR. BERNSTEIN: Your Honor --

24 THE COURT: When you --

25 MR. BERNSTEIN: I was sent an email to me.

1 Like I do when I get a letter that has
2 threatening stuff to me I sent it to my friends
3 who are lawyers. I sent it to a number of
4 people. Actually, I got so busy sending it to
5 people, because it scared me a little bit that
6 it was very threatening to people, that by the
7 time I was done my wife stopped me and said we
8 got to go to court. All I know is my brother
9 sent me an email that seems pretty threatening.
10 It was addressed to me. I was the intended
11 recipient.

12 THE COURT: Let me ask you, when the email
13 starts off Alan --

14 MR. ROSE: I get a million emails --

15 THE COURT: That say Alan?

16 MR. BERNSTEIN: That say whoever's name.

17 THE COURT: Okay. All right. You know
18 what, I don't buy anything you just told me.

19 MR. BERNSTEIN: I thought my brother was
20 sending me a copy of an email --

21 THE COURT: Stop. Stop. Stop speaking.
22 I'm going to look at the rule for a second.

23 MR. BERNSTEIN: Okay.

24 MR. ROSE: It's 1.285.

25 THE COURT: Okay.

1 MR. BERNSTEIN: I haven't been prepared
2 for this, so...

3 THE COURT: Okay.

4 MR. BERNSTEIN: I haven't looked at the
5 rules.

6 THE COURT: Okay.

7 MR. BERNSTEIN: I can show you several
8 instances in my email of people sending me
9 letters addressed to other people, several
10 thousands of those.

11 THE COURT: So, all right. Everyone has
12 to take a deep breath. This situation is done
13 pursuant to Rule 1.285. So Mr. Rose, on your
14 side, correct me if you think I'm wrong,
15 Subsection A says, "When you" -- your client --
16 "takes a position that there's been an
17 inadvertent disclosure of privileged materials
18 to another person" -- which is what you say
19 happened, correct?

20 MR. ROSE: Correct, sir.

21 THE COURT: It says here, "In order to
22 assert the privilege the party, person or
23 entity shall, within 10 days of actually
24 discovering the inadvertent disclosure, serve
25 written notice of the assertion of privilege on

1 the party to whom the materials were disclosed.
2 The notice shall specify with particularity" --
3 etc. And then there's a procedure.

4 MR. ROSE: I did that last night. I
5 emailed him last night.

6 THE COURT: I didn't know that. So you
7 gave him the written notice. I assume he got
8 it. Can I see a copy of the notice?

9 MR. ROSE: I'm trying to get a copy of the
10 notice. Perhaps -- I'm not trying to have the
11 whole argument heard today. I just --

12 THE COURT: The rule applies.

13 MR. ROSE: Right.

14 THE COURT: So once he gets notice, the
15 rule applies. So the notice will have -- you
16 sent it by email?

17 MR. ROSE: I have it here now. I do find
18 it, sir. May I approach?

19 THE COURT: What's the time and date of
20 the notice?

21 MR. ROSE: May 22, 2014 at 11:07 p.m. I
22 said, "You received an email from Ted intended
23 solely for me, and accidentally sent to you by
24 mistake. The email was sent around 10:12 p.m.
25 tonight. Please delete the email immediately

1 without reading it and confirm that deletion by
2 email. The communication was attorney-client
3 protected and you are not entitled to read or
4 possess the email due to the accidental
5 transmission. Thank you in advance. And if
6 you fail to comply with this request we'll be
7 forced to take corrective action with the
8 court." Signed by me sent to the same email
9 address that --

10 THE COURT: Okay. All right. So the rule
11 says, to Eliot, he sent that to you, Rule
12 1.285, Subsection B tells you what you're
13 supposed to do.

14 MR. BERNSTEIN: I haven't seen it yet.

15 THE COURT: Okay.

16 MR. BERNSTEIN: He's saying he sent it
17 after Ted's email. The last email I read was
18 Ted's email. So I haven't seen it.

19 THE COURT: So open that email --

20 MR. BERNSTEIN: Okay.

21 THE COURT: Okay. And do what the rule
22 says.

23 MR. BERNSTEIN: Don't send it to anybody
24 else.

25 THE COURT: Well, okay, that, but it also

1 says some other things of what you're supposed
2 to do. You're supposed to return or destroy
3 it. That's one thing you're supposed to do.
4 And you are to notify anyone else who you
5 disclosed it to that they're to do the same
6 thing and you're also to take reasonable steps
7 to retrieve the materials disclosed --

8 MR. BERNSTEIN: I'll do all that.

9 THE COURT: And the only exception to this
10 is if you want to challenge that assertion that
11 you were provided an inadvertent privileged
12 matter. And then the rule says what could
13 happen and we can have litigation and spend a
14 lot of money.

15 MR. BERNSTEIN: No. I'll do whatever it
16 is -- whatever the law says, as always.

17 THE COURT: There's nothing for me to do.

18 MR. ROSE: I understand. I just want to
19 make sure you --

20 MR. BERNSTEIN: Your Honor, it went out to
21 a lot of people. Like I said, I have a broad
22 base --

23 THE COURT: Take a look. When you leave
24 the courthouse --

25 MR. BERNSTEIN: Okay. I'll notify

1 everybody though.

2 THE COURT: Go and take a look at the rule
3 and just do what the rule says.

4 MR. ROSE: And it's not to be posted on
5 social media.

6 THE COURT: You see, I'm not allowed to
7 have dialogue on that now. Other than signing
8 the order, hearing over. Thank you.

9 (Whereupon the hearing is concluded at 10:00 a.m.)

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1 CERTIFICATE OF COURT REPORTER

2

3 I, JULIE ANDOLPHO, do hereby certify that
4 the foregoing transcript of the proceedings,
5 consisting of pages numbered 1 through 54,
6 inclusive, is a true and correct transcript of the
7 proceedings taken by me before the Honorable MARTIN
8 COLIN, on May 23, 2014.

9 I further certify that I am not a relative
10 or employee or attorney or counsel of any of the
11 parties, nor a relative or employee of such attorney
12 or counsel, or financially interested, directly or
13 indirectly, in this action.

14 The certification does not apply to any
15 reproduction of the same by any means unless under
16 direct control and/or direction of the reporter.

17 Dated this 27th day of May, 2014.

18

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Julie Andolpho

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<p>§</p> <p>\$1,000-an-hour-guy 43:6</p> <p>\$1.7 6:9 14:2</p> <p>\$12,000 43:8</p> <p>\$700,000 33:6</p> <hr/> <p>1</p> <p>1 37:20 54:5</p> <p>1.285 4:11,21 48:24 49:13 51:12</p> <p>10 49:23</p> <p>10:00 1:13 53:9</p> <p>10:12 47:5 50:24</p> <p>11:07 50:21</p> <p>13 28:25</p> <hr/> <p>2</p> <p>2 37:21</p> <p>2,000 4:16 47:17</p> <p>200 3:5</p> <p>2012 46:9</p> <p>2014 1:12 3:7 50:21 54:8,17</p> <p>213 2:14</p> <p>22 50:21</p> <p>23 1:12 54:8</p> <p>23rd 3:7</p> <p>27th 54:17</p> <hr/> <p>3</p> <p>3 37:21</p> <p>30 4:4</p> <p>330 2:14</p> <p>33401 2:10,14,18</p> <p>33436 2:6</p> <p>350 41:25</p> <p>3695 2:5</p> <hr/> <p>4</p> <p>401 2:18</p> <p>44 45:3</p> <hr/> <p>5</p> <p>502012CP004391XXX XSB 1:2</p> <p>505 2:10</p>	<p>54 54:5</p> <hr/> <p>6</p> <p>6 33:6</p> <p>625 2:18</p> <hr/> <p>9</p> <p>9 2:5</p> <p>9:00 1:13</p> <hr/> <p>A</p> <p>a.m 1:13 53:9</p> <p>ability 43:18</p> <p>able 22:9 24:14 29:4 34:15 40:20 41:2 43:18</p> <p>above-styled 3:3</p> <p>absolutely 26:1 42:11</p> <p>acceptable 26:7</p> <p>accident 47:7,9</p> <p>accidental 51:4</p> <p>accidentally 4:22 50:23</p> <p>accidently 4:6</p> <p>according 6:16 7:17 17:6</p> <p>account 45:6</p> <p>accountant 45:5</p> <p>accounting 44:23 45:16,19,25</p> <p>accused 27:17,18</p> <p>acquire 45:6</p> <p>act 15:5</p> <p>action 7:5 8:13 9:22 14:9 15:12 17:22 35:25 36:8 51:7 54:13</p> <p>actions 15:19,20</p> <p>active 22:4 23:1 29:20</p> <p>actively 13:18</p> <p>actually 6:17 26:21 48:4 49:23</p> <p>ad 5:23 6:3 7:3 13:24 22:7,16 27:10 28:14 44:17</p> <p>Adam 19:11,18</p>	<p>21:17 27:20</p> <p>addition 25:8</p> <p>address 15:3 23:9 46:19 51:9</p> <p>addressed 5:3 47:2 48:10 49:9</p> <p>addressing 11:24</p> <p>administrator 5:23 6:3 7:3 13:24 15:24 22:7,16 27:10 28:13 44:17</p> <p>admitted 34:13</p> <p>adult 2:12 3:18 9:9,11,18,22 17:18,19</p> <p>adults 9:18</p> <p>advance 22:21 51:5</p> <p>adverse 14:9 22:25</p> <p>advised 4:15,23,24 47:17</p> <p>advocate 39:17 46:14</p> <p>advocating 18:10 33:2 39:21,22 40:4,15</p> <p>affidavit 11:17,23 21:6</p> <p>against 17:25 29:23 44:4</p> <p>ago 20:21</p> <p>ahead 4:3 5:18 6:23 22:13 33:20</p> <p>airplane 47:6</p> <p>Alan 2:9 3:19 47:13 48:13,15</p> <p>allegation 30:7</p> <p>allege 20:11</p> <p>alleged 7:10,22</p> <p>allow 23:15 24:23 34:10</p> <p>allowed 15:4,11 20:4 26:14 31:14 38:23 41:10 53:6</p> <p>allowing 24:20</p> <p>already 13:16 15:20 27:19</p>	<p>33:14 47:18</p> <p>am 38:15 54:9</p> <p>amended 17:17</p> <p>among 13:4</p> <p>amount 13:21</p> <p>analysis 16:10,11 47:12</p> <p>analyst 45:5</p> <p>and/or 10:19 21:19 54:16</p> <p>Andolpho 54:3,19</p> <p>answer 28:20 44:8,23</p> <p>anticipate 16:14</p> <p>anybody 51:23</p> <p>anyone 31:17,18 36:21 38:24 52:4</p> <p>anything 12:13 48:18</p> <p>anytime 40:21</p> <p>apparently 14:2 27:20</p> <p>appearance 6:5</p> <p>Appearances 2:1 3:12</p> <p>appearing 2:3,8,12,16,20 27:11</p> <p>application 14:1</p> <p>applies 50:12,15</p> <p>apply 26:24 54:14</p> <p>appoint 6:2 7:3 22:15,17 29:13 39:20</p> <p>appointed 15:24 27:10 28:1,13 33:20 39:16</p> <p>appointment 5:23</p> <p>approach 46:23 50:18</p> <p>appropriate 39:6</p> <p>appropriately 23:16</p> <p>approve 20:14 41:22,24</p> <p>arguably 6:18</p> <p>argue 32:24</p> <p>argues 34:8</p> <p>argument 36:12</p>
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IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY , FLORIDA

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

TRANSCRIPT OF PROCEEDINGS BEFORE

HONORABLE MARTIN COLIN

DATE: January 8, 2015

TIME: 9:17 a.m. - 9:58 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
3 3615 W. BOYNTON BEACH BOULEVARD
4 BOYNTON BEACH, FL 33436
By: PETER M. FEAMAN, ESQ.
JEFFREY ROYER, ESQ.

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7 KONOPKA & DOW, P.A.
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By: ALAN B. ROSE, ESQ.

9 APPEARING ON BEHALF OF THE PR:

10 CIKLIN LUBITZ
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12 WEST PALM BEACH, FL 33401
By: BRIAN M. O'CONNELL, ESQ.

13 APPEARING ON BEHALF OF MOLLY SIMON, ET AL:

14 JOHN P. MORRISSEY, ESQ.
15 330 CLEMATIS STREET, SUITE 213
WEST PALM BEACH, FL 33401

16 ELIOT I. BERNSTEIN, Pro se

17 ALSO PRESENT: CANDICE BERNSTEIN

18

19 BE IT REMEMBERED, that the following
20 proceedings were taken in the above-styled cause before
21 the Honorable MARTIN COLIN, at the Palm Beach County
22 Courthouse, 200 West Atlantic Avenue, Room 8, in the City
23 of Delray Beach, County of Palm Beach, State of Florida,
24 on January 8, 2015, to wit:

25

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Mr. Bernstein, do you want to do
4 what you're doing at 8:45 or do you want to wait
5 until 9:30?

6 MR. ELIOT BERNSTEIN: You mean me?

7 THE COURT: I mean, whoever has --

8 MR. FEAMAN: I have an 8:45, Your Honor.

9 THE COURT: And you would not normally be
10 here for the 9:30?

11 MR. FEAMAN: That's correct.

12 THE COURT: All right. Okay. All right.
13 Okay. We'll take it.

14 MR. FEAMAN: Thank you, Your Honor.

15 May it please the court.

16 THE COURT: I don't have any paperwork, so...

17 MR. FEAMAN: May I approach, Your Honor?

18 THE COURT: Sure. Okay.

19 MR. FEAMAN: Peter Feaman, Your Honor, on
20 behalf of William Stansbury in the Estate of Simon
21 Bernstein.

22 This is a motion, Your Honor, to relieve
23 Mr. Stansbury of further responsibility of
24 funding what we call the Chicago insurance
25 litigation. Your Honor may recall that while

1 Mr. Tescher and Spalina were the personal
2 representatives, there was this case going on
3 in Chicago involving \$1.7 million of life
4 insurance. They, for reasons unknown as yet to
5 the court, did not get the estate involved.

6 Mr. Stansbury, as you know, is a creditor
7 of the estate. And so he's looking for ways --
8 a substantial creditor, 2.5 million is the
9 claim -- he's looking for ways to get money
10 into the estate, sees that there's this
11 litigation going on in Chicago which could
12 result in all that money coming into the
13 estate.

14 THE COURT: I remember.

15 MR. FEAMAN: Okay. And so at this point,
16 Your Honor, the mission has been accomplished, in
17 the sense that the estate was allowed -- has been
18 allowed to intervene, discovery is ongoing. In
19 fact, there is a deposition this week up in
20 Chicago, and the attorneys up in Chicago
21 representing the estate have now said, you know,
22 we'll even take this case on a contingency to
23 benefit the estate, or even a modified
24 contingency, like reduced hourly.

25 THE COURT: What was Mr. Stansbury -- what

1 was the nature of what he was paying?

2 MR. FEAMAN: Just a straight hourly.

3 THE COURT: To the Chicago lawyers?

4 MR. FEAMAN: Yes, Your Honor.

5 And now we think we've got the --

6 THE COURT: What's the status of the case up
7 there?

8 MR. FEAMAN: Discovery is ongoing. Not yet
9 set for trial.

10 In discussing this with Mr. O'Connell,
11 who's here, now the full-fledged PR. When we
12 first did this, Ben Brown was the curator,
13 authority is limited.

14 So in discussing this with Mr. O'Connell,
15 he agrees. He thinks that they can now go
16 forward without --

17 THE COURT: Did I hear something that you
18 settled?

19 MR. FEAMAN: We have a signed settlement
20 agreement that Mr. Stansbury has signed.

21 Mr. O'Connell will be coming before the court
22 after notice to every interested party.

23 Mr. O'Connell --

24 THE COURT: Is everyone on board on the
25 settlement?

1 MR. O'CONNELL: I'm not sure, Your Honor.

2 Mr. Rose negotiated with Mr. Feaman --

3 THE COURT: You on board, Mr. Bernstein?

4 MR. ELIOT BERNSTEIN: I haven't seen anything
5 yet.

6 THE COURT: Oh, you haven't seen it yet.

7 Okay. So you say okay to let him off?

8 MR. O'CONNELL: Let him off because, Your
9 Honor, the solution is this: If we get the
10 settlement agreement approved, hopefully we can --

11 THE COURT: Okay.

12 MR. O'CONNELL: -- then that litigation,
13 basically, will go away so some bells and whistles
14 in terms of --

15 THE COURT: The litigation in --

16 MR. O'CONNELL: In Chicago.

17 THE COURT: Meaning, they're going -- the
18 insurance case is going to settle?

19 MR. O'CONNELL: Well, it can, in this sense.
20 The real need for it, the driver, at least for me,
21 as the fiduciary, is the fact that it's been
22 mentioned, is a claim against the estate that
23 exceeds the existing assets. Ergo, I can't just
24 turn my back on the fact that there's a potential
25 amount of money to come into the estate. But if

1 we get the settlement done with Mr. Stansbury,
2 then based on what I've seen, there aren't any
3 other claims that really need attention in that
4 sense. And if I need money, there's a clause in
5 the trust that I can get money from the trust. So
6 I'm pretty much covered in that respect. So
7 that's why I wanted to point out to the court the
8 real solution to this --

9 THE COURT: Are they still going to pursue
10 the 1.7 million in Chicago?

11 MR. O'CONNELL: On that, I think I can deal
12 with Mr. Rose, and I can deal with Mr. Morrissey
13 and come up with a way, based on how all this
14 would shake out, and Eliot as well. We might be
15 able to get rid of that litigation.

16 THE COURT: Okay.

17 MR. O'CONNELL: I know it's a little
18 complicated, but it has to do, Judge, with who
19 would sort of get what based on how that
20 litigation turns out. But I think we would be in
21 a much better position, we would have advanced the
22 ball if we can get that accomplished.

23 THE COURT: Eliot, what do you say of
24 Mr. Stansbury's request?

25 ELIOT BERNSTEIN: I haven't seen anything.

1 THE COURT: No, the --

2 ELIOT BERNSTEIN: Be paid by the estate,
3 yeah.

4 THE COURT: Mr. Rose?

5 MR. ROSE: We have the same concerns that
6 we've had from the beginning, which is to not be
7 spending estate assets on this litigation. We
8 had, you know, if you recall, a lengthy hearing
9 and discussion about it. The concern is it's a
10 case where we don't believe the estate has a
11 strong case. And our concern was that you expend
12 estate assets to do it.

13 THE COURT: Now, I hear that the lawyers up
14 there will do it on a contingency fee for the rest
15 of the case.

16 MR. ROSE: That's actually something Your
17 Honor raised at the last hearing, which is concern
18 that if you take 40 percent of the money, you
19 know, and give it to lawyers, you're taking it out
20 of the family. If you get rid of Mr. Stansbury --

21 THE COURT: Mr. Stansbury kind of did this
22 semi-gratuitously to keep the litigation alive.
23 He may have had a personal financial interest, but
24 if he's settling the case and getting out, how can
25 I keep him in paying for that Chicago litigation?

1 MR. ROSE: That was -- I agree with you. My
2 suggestion is that you would almost defer this
3 until we have the hearing on the approval of the
4 settlement. If the settlement is approved, I
5 agree, Mr. Stansbury should be out completely.
6 And then, as Mr. O'Connell says, if you do the
7 math, if you're going to hire a lawyer on a
8 contingency fee with -- if Mr. Stansbury is out of
9 the picture, if you hire a lawyer on contingency
10 fee and give up 40 percent of the money, or a
11 third of the money, to a lawyer, then no matter
12 how you do the math, it ends up -- everyone ends
13 up worse off. Every single person that is a
14 potential beneficiary --

15 THE COURT: I obviously would do a
16 contingency fee because the estate and those
17 interested persons don't want to pay hourly. And
18 so it's one or the other, or drop the suit. And
19 drop the suit doesn't seem to be what we want to
20 do at this point. So, you know, if --

21 MR. ROSE: Our suggestion --

22 THE COURT: -- the interested people who
23 would have, you know, which are the Bernsteins and
24 Mr. O'Connell, you know, don't want to pay hourly
25 because they don't want to continue to diminish,

1 you know, the value of the estate, then
2 contingency is what's left.

3 MR. ROSE: Mr. Morrissey represents four of
4 the individual creditors.

5 MR. MORRISSEY: Judge, John Morrissey here on
6 behalf of the four adult grandchildren. And if I
7 may approach, I'll provide Your Honor with a copy
8 of the excerpts from a hearing that we had wherein
9 Ben Brown was initially appointed, and Your Honor
10 allowed him to go forward with the Illinois
11 litigation on behalf of the estate.

12 ELIOT BERNSTEIN: Can I have a copy of that?

13 MR. MORRISSEY: I just have this.

14 At that hearing -- that hearing was on
15 November 23rd. Your Honor made it absolutely
16 clear that under no circumstances was the
17 estate to pay. And I've highlighted various
18 portions. Your Honor indicates that Mr. Feaman
19 says that his client will not seek fees for his
20 role as administrator ad litem unless and until
21 recovery might take place, and then he'll make
22 application to the funds available.

23 That was what the deal was, essentially.

24 And if Your Honor will look then on the
25 bottom of Page 34, top of Page 35, I make

1 inquiry. We're now talking about having to
2 pay, you know, from my client's prospective
3 profits -- pockets -- Mr. Brown's fees, an
4 attorney up in Illinois. And Your Honor says,
5 I just said that won't be the case. It would
6 only be the case if there was a recovery for
7 the estate to which then Mr. Stansbury would
8 say, under the statute, I performed a benefit
9 to the estate. Your Honor then says there is
10 not a dollar coming out of the estate unless
11 there is a recovery, basically. And then the
12 recovery would take place. And he, meaning
13 Mr. Stansbury, would seek some recovery of
14 fees.

15 So at that May 23rd hearing --

16 THE COURT: That was before we had a PR and,
17 you know, while we had a curator. Now
18 Mr. Stansbury is getting out. So what are you
19 suggesting we do?

20 MR. MORRISSEY: Well, I mean, either you
21 don't let Mr. Stansbury get out, or, if you do --

22 THE COURT: So hold it. Time out. Your
23 position on behalf of your clients is that
24 Mr. Stansbury purportedly is going to settle the
25 case and he should still pay for the fees up

1 there? Is that what you're telling me?

2 MR. MORRISSEY: No. We don't agree with this
3 purported settlement. That's another issue.

4 THE COURT: I didn't know that.

5 MR. MORRISSEY: This purported settlement is
6 something that we disagree with.

7 THE COURT: All right.

8 MR. MORRISSEY: We vehemently oppose. So my
9 client's position is, we oppose the settlement
10 agreement. Mr. Stansbury represented to the court
11 that, yes, he would go forward and intervene to
12 the conclusion of this litigation. Now, at
13 midstream, he's backing out.

14 THE COURT: He's not really backing out.
15 He's saying I'm settling. I'm getting out. I
16 shouldn't continue to pay. That sounds logical.
17 If that happens.

18 MR. MORRISSEY: He's not settling, though.

19 THE COURT: But until you just told me that,
20 this side of the room said that there was a
21 settlement agreement that's going to be
22 circulated -- I understand not everyone saw it. I
23 didn't even know there was opposition, at least in
24 principal. So you're the first voice that I've
25 heard that you're opposing it. So, you know, I

1 mean --

2 MR. MORRISSEY: Judge, there are two things
3 that before Your Honor rules on this motion and
4 allows Mr. Stansbury to withdraw, essentially, in
5 terms of paying fees, there are two things that
6 should happen. Number one, as Mr. Rose said, Your
7 Honor should hear, you know, this settlement
8 issue, and hear the objections to it and determine
9 whether the settlement should go forward. But
10 even before that, Your Honor should hear the
11 Count II of a complaint that Mr. Rose filed. And
12 that is as to the validity of the documents -- the
13 underlying documents themselves.

14 If I may provide Your Honor --

15 THE COURT: The underlying documents, which
16 documents are you talking about?

17 MR. MORRISSEY: All of them. The last will
18 and testament of Shirley Bernstein.

19 THE COURT: How does that help me decide what
20 to do with this?

21 MR. MORRISSEY: Well, essentially, everything
22 falls into place after that. Why? Because we
23 don't even know who, ultimately, the beneficiaries
24 are.

25 So in terms of a settlement, Mr. O'Connell

1 has filed a motion to approve a settlement.
2 It's theoretically possible that after Your
3 Honor determines the validity of these various
4 documents, my clients might not be
5 beneficiaries. So Your Honor would want to
6 make the determination who's the beneficiaries
7 before Your Honor hears a motion to approve a
8 settlement and knows who can object to that
9 settlement, or agree to it.

10 And if I may provide Your Honor with a
11 copy of the -- Your Honor's order and the
12 notice of trial that has been filed by
13 Mr. Rose.

14 Mr. Rose filed a two-count complaint. And
15 that the second count, if you look at Your
16 Honor's order, and specifically Paragraph 3 of
17 that order, says that upon the filing of the
18 answers to Count II -- Count II relates to the
19 validity of the documents themselves -- the
20 court severs Count II --

21 THE COURT: Okay. I got it. So
22 Mr. O'Connell, do I have to decide Count II in the
23 amended complaint before you have a clear sense of
24 how to deal with the potential settlement of Mr.
25 Stansbury?

1 MR. O'CONNELL: I don't think so, Your Honor.
2 And here's why. Because I'm happy to have Mr.
3 Morrissey advocate -- now I'm hearing -- against
4 the settlement because I think that's, frankly,
5 good for the court to hear all sides of this. So
6 if there is some concerns that he has that the
7 court may find valid, that's fine. I don't think
8 there are.

9 THE COURT: I don't adjudicate sides of
10 settlements. Settlements are outside --

11 MR. O'CONNELL: I guess whatever his
12 objections are.

13 THE COURT: But those are private to you.
14 And I think Mr. Feaman agrees with that, correct?

15 MR. FEAMAN: Yes.

16 THE COURT: I mean, I can't -- I'm not going
17 to have a hearing on that.

18 What about the point that is made that
19 assuming you do have a draft of a settlement
20 agreement that appears to be appropriate.
21 Mr. Morrissey is saying until Count II is
22 adjudicated, you don't even know who the
23 parties are to the settlement who would be in a
24 position to either agree or not agree with it.

25 MR. O'CONNELL: Actually, we know who the

1 parties are, Your Honor, because it would be we
2 have Mr. Stansbury as the claimant and then
3 myself as the defendant.

4 THE COURT: Estate.

5 MR. O'CONNELL: Right. Those are the
6 parties. And then --

7 THE COURT: Then you have interested people
8 who may or may not agree?

9 MR. O'CONNELL: Right. Who are here.

10 THE COURT: Who may or may not be interested,
11 depending on Count II, according to what
12 Mr. Morrissey says.

13 MR. O'CONNELL: I think it's important
14 enough, Your Honor, just from the standpoint of
15 getting this estate moving towards a conclusion.

16 THE COURT: Right. True.

17 MR. FEAMAN: That settlement really does
18 handle a number of important matters.

19 THE COURT: All right. Here's how I'm going
20 to do this. Is the settlement between the estate
21 and Mr. Stansbury in a final form yet?

22 MR. O'CONNELL: It is. We just need some
23 hearing time, Your Honor.

24 THE COURT: It's circulated --

25 MR. O'CONNELL: It's signed by Mr. Stansbury,

1 Your Honor.

2 THE COURT: And signed by you, Mr. O'Connell,
3 or will be?

4 MR. O'CONNELL: Will be, once it's approved.

5 THE COURT: So --

6 MR. O'CONNELL: And drafted by Mr. Rose.

7 THE COURT: You two are the two main parties
8 to the settlement, correct?

9 MR. O'CONNELL: Yes. And it was drafted by
10 Mr. Rose, Your Honor.

11 THE COURT: Hold on. Let me finish what I'm
12 going to say. And so there will be a motion to
13 approve the settlement. Okay. Notice will go to
14 all interested persons, who are here. And they
15 have a right then to tell me if they object. And
16 I can hear whether or not I think they have
17 standing to object, and all those other things
18 that I normally hear at a hearing like that?

19 Yes, Eliot?

20 ELIOT BERNSTEIN: If I'm going to be asked to
21 accept or deny that --

22 THE COURT: You get service.

23 MR. O'CONNELL: He will.

24 ELIOT BERNSTEIN: I think it's between the
25 other --

1 THE COURT: Yeah, they're the main parties,
2 but they'll serve you with --

3 ELIOT BERNSTEIN: If I have to do that, I
4 have children that have a conflict of my interests
5 versus theirs and that. They would need
6 representative counsel to sign off on it.

7 THE COURT: You have a conflict with your
8 children on that?

9 ELIOT BERNSTEIN: On that particular issue.

10 THE COURT: I don't know, you know, so --

11 ELIOT BERNSTEIN: So they would need counsel
12 and I don't -- I would ask the estate to provide
13 that if they're asking us to sign off.

14 MR. FEAMAN: If I may, Your Honor. There is
15 a whole issue as to whether the children even have
16 standing before this court because, as Mr. Rose
17 has alleged, the trustee, his client, is the sole
18 beneficiary of the estate.

19 THE COURT: I got that part. Okay. So
20 here's the way that works. I mean, anyone can
21 appear who says they are interested at the hearing
22 on the motion to approve settlement. You know,
23 they can appear pro se or through counsel.
24 Whoever shows up, I determine who are you, do you
25 have standing. And then if there is standing,

1 then I'll hear what the basis of the objection is.
2 So the children can -- if you say are -- if you
3 think they are independently interested persons,
4 they can hire counsel.

5 ELIOT BERNSTEIN: They're minors.

6 THE COURT: They can appear themselves. If
7 they want to take that position. But I can't, at
8 8:45 today, direct the estate to pay for their
9 lawyer. I can't do that. I mean, that's beyond
10 what I'm allowed to do.

11 ELIOT BERNSTEIN: I'll check with the estate.

12 THE COURT: You can talk to counsel about
13 that.

14 All right. Then -- so how quickly can
15 that be done?

16 MR. O'CONNELL: Today, I can circulate it.

17 THE COURT: Okay. So I'm going to make this
18 a priority matter and I'm going to give you a
19 hearing time on a motion to approve.

20 And then what I'll do is, depending upon
21 that hearing, which I'm going to have right
22 away, I'll deal with the issue of
23 Mr. Stansbury's request to be discharged.

24 And I'm not saying, though, that his
25 discharge is solely tied into whether the

1 settlement is accepted.

2 MR. FEAMAN: That's correct, Your Honor.

3 THE COURT: I have to independently decide
4 whether I think it's appropriate that he continue
5 to fund the litigation. It's never -- never like
6 a life jail sentence type of thing, you know,
7 there's always -- it's an interlocutory order that
8 could be modified.

9 MR. FEAMAN: Right.

10 THE COURT: I mean, let's, you know, keep in
11 mind what I'm thinking. Okay.

12 MR. FEAMAN: Yeah, because I --

13 THE COURT: How much time do you think you
14 need? I got it.

15 MR. FEAMAN: I respectfully suggest to the
16 court that there is no compulsion for
17 Mr. Stansbury to do anything with regard to the
18 Chicago litigation.

19 THE COURT: Okay. We'll take a look. I
20 mean, I've got a grasp of what's going on.

21 How much time do you think you need,
22 collectively, to have a hearing?

23 MR. MORRISSEY: To approve the settlement.

24 THE COURT: I mean, if there's going to be
25 standing and/or substantive objections, I need

1 time to be able to hear that.

2 MR. ROSE: I'm not going to shed a brief
3 light on that. They said that I drafted the
4 agreement. I did actually, on behalf of the --
5 Ted, as trustee, I explored settlement with
6 Mr. Stansbury to the point of you need to know
7 what the number is so you can go to the
8 beneficiaries and sort of take their pulse. If
9 it's a dollar, it's one thing. If it's two
10 billion dollars --

11 THE COURT: Whoever did the drafting of it
12 doesn't matter to me.

13 MR. ROSE: My point to you was, though, I did
14 get a sense that at least seven of the
15 beneficiaries are theoretically against the
16 settlement.

17 THE COURT: Okay.

18 MR. ROSE: So I didn't proceed forward with
19 the settlement. And I didn't have a chance to
20 speak to Mr. Eliot Bernstein about his position,
21 but he's been opposed to many things, but...

22 THE COURT: No, Eliot doesn't do that. He
23 rarely opposes anything. That's my recollection
24 of it.

25 ELIOT BERNSTEIN: Last hearing I didn't

1 object to it.

2 THE COURT: Eliot has turned a new leaf,
3 haven't you noticed?

4 MR. ROSE: I haven't, unfortunately.

5 THE COURT: I have.

6 MR. ROSE: Seven out of ten are opposed so I
7 think you may get some -- you may get a
8 significant amount of objection to the settlement.

9 THE COURT: I just need to know how much
10 time. How much time?

11 MR. ROSE: Ninety minutes, maybe.

12 MR. O'CONNELL: Hour and a half, John?

13 THE COURT: Hold on. I'm filling up this
14 week very quickly. We want to do this right away,
15 so let's take a look here. I mean, can you be
16 ready by the 27th? I can give you two hours. And
17 you probably heard, I gave three dates to that
18 other case ahead of you, I'll just take away the
19 date that I give you folks.

20 MR. O'CONNELL: 27th is fine for me, Your
21 Honor.

22 THE COURT: Three to five. I'll give you two
23 hours. Take a look at your calenders, see if that
24 works.

25 MR. FEAMAN: We're fine.

1 MR. ROSE: I can be there.

2 MR. MORRISSEY: I think so. I don't have my
3 calendar, but I'm pretty sure I can.

4 THE COURT: All right. So you folks have
5 that. All right. So I got to -- okay. So you
6 have that on the -- and I'm going to call it
7 motion for settlement.

8 MR. O'CONNELL: Sure.

9 THE COURT: Do a notice of hearing 3:00 to
10 5:00, January 27th. Okay. And let me just make a
11 note for the other case now. Hold on.

12 Okay. Yes.

13 MR. ROSE: Just briefly. To follow up with
14 what Mr. Morrissey said, though, his count --

15 THE COURT: I'm not --

16 MR. ROSE: I was going to mention
17 Mr. O'Connell and I've discussed the issue. He's,
18 I think, of the opinion it's important to get a
19 resolution on the validity of the documents,
20 although it doesn't have to be tied to the
21 Stansbury motion. I just wanted to point out,
22 I've actually discussed the issue with Mr.
23 O'Connell.

24 THE COURT: So we need to give a trial date
25 on Count II?

1 MR. O'CONNELL: Yes. And I agree with that,
2 Your Honor. That's correct.

3 THE COURT: How much time?

4 ELIOT BERNSTEIN: What case is that in?

5 THE COURT: What case is that in? It's in
6 14CP3698.

7 ELIOT BERNSTEIN: That's a separate case,
8 right?

9 THE COURT: Yeah.

10 ELIOT BERNSTEIN: Than what we're here for.
11 We're here on Simon.

12 THE COURT: Let's see.

13 MR. ROSE: It's technically a trust
14 construction case.

15 ELIOT BERNSTEIN: I'm not ready for that yet
16 because we have to see if the trustee is fit to
17 argue that case first.

18 THE COURT: I'm just trying --

19 ELIOT BERNSTEIN: We should have that first
20 like we've been trying to.

21 THE COURT: But we have hearing dates on
22 other things. But let me ask you this. How much
23 time do you need for the trial on that?

24 MR. ROSE: Half a day, at most, because there
25 is no evidence. You know, if he has to present

1 evidence that the documents are invalid --

2 THE COURT: All right. So --

3 MR. ROSE: And it is a pretty important
4 threshold issue.

5 THE COURT: It's at issue?

6 MR. ROSE: It's at issue.

7 THE COURT: Ready for trial?

8 MR. ROSE: Ready for trial. We noticed it
9 for trial.

10 THE COURT: Well, I know that. But ready --
11 you can notice something ready for trial -- is it
12 ready now for trial? All the reasonable discovery
13 that has to be made has been made?

14 MR. ROSE: I'm prepared to try the case. I
15 don't know how much Mr. Bernstein --

16 THE COURT: So who are the other parties in
17 that case?

18 MR. ROSE: Mr. O'Connell would like to
19 intervene in the case solely because he's the
20 personal representative of the estate. And this
21 will decide who the beneficiaries are of the
22 estate. So he has an interest in it. But he's
23 indicated that he wants to -- he wants to be
24 involved, but he's not going to necessarily be
25 actively litigating it.

1 THE COURT: So who else --

2 MR. O'CONNELL: Correct.

3 THE COURT: So these -- let me look at the
4 defendants. Looks like a bunch of children. So
5 is that -- Mr. Morrissey, are you the defendant's.

6 MR. MORRISSEY: For four of those. Molly --

7 THE COURT: And some of these, are they
8 Eliot's children?

9 ELIOT BERNSTEIN: Minors. Who are
10 unrepresented.

11 THE COURT: Okay. And then your clients?

12 MR. MORRISSEY: Four.

13 THE COURT: And then who are the other
14 children?

15 MR. ROSE: Everyone else defaulted. They
16 defaulted in the sense that they're not taking a
17 position that they're going to rely on what Your
18 Honor rules. So it's technically, I think, at
19 issue. And it would go a long way to resolving a
20 lot of issues, like, who has standing to do
21 various things.

22 THE COURT: So tell me this. What hearings,
23 other than the one set for -- one second. So let
24 me ask you this. Today's 9:30 on the motion for
25 instructions, what's that about? That's the

1 estate case, correct?

2 MR. O'CONNELL: It is.

3 THE COURT: Is that related to this, or not?

4 MR. O'CONNELL: The estate, but not to the
5 litigation, Your Honor. But we need to hear it
6 later.

7 THE COURT: So what hearings do we have that
8 are special set now coming up?

9 ELIOT BERNSTEIN: We need the hearing to
10 remove Ted first.

11 THE COURT: There is no date for that?

12 ELIOT BERNSTEIN: Still serving the
13 complaint.

14 THE COURT: Because there was an amendment
15 on the complaint.

16 ELIOT BERNSTEIN: So there's -- then
17 there's -- still serving two of the parties.

18 THE COURT: So is there a -- is there a
19 removal action to remove Ted as trustee of
20 Shirley's trust?

21 ELIOT BERNSTEIN: Yes.

22 THE COURT: That's been pending for a while?

23 ELIOT BERNSTEIN: Yeah, we can hear that.

24 THE COURT: There's been amendments to that.

25 MR. ROSE: There was actually a recent filing

1 of a -- there's been a motion to dismiss served
2 directed to it. He hasn't served all the other
3 people. It's not at issue and it's not going to
4 be at issue for a significant period of time. I
5 think what Mr. O'Connell feels, and what I feel,
6 and what Mr. Morrissey feels, and the other
7 beneficiaries are, that -- first of all, if you
8 rule that the documents are invalid, then you
9 don't have to remove Ted because he doesn't ever
10 get appointed if the documents go away. So
11 that's, you know, sort of the cart before the
12 horse. And the other thing is, you need to get a
13 ruling on the validity of these five documents
14 that are being challenged, only by Eliot, as to
15 the validity, and, I assume, testamentary
16 capacity. And whether Ted is the trustee or --
17 then you have Mr. O'Connell -- that needs to be
18 tried.

19 THE COURT: I got it. I understand. Okay.

20 MR. ROSE: And then the removal can happen in
21 its ordinary course.

22 THE COURT: Go ahead.

23 ELIOT BERNSTEIN: The problem is that you
24 have to have the hearing to remove Ted as
25 successor because then he can't argue that case.

1 And somebody will have to be appointed to come in
2 and argue these things that only these guys seem
3 to want to argue. So if Ted doesn't survive, then
4 a qualified trustee, somebody else will be
5 appointed who will then decide if we're going to
6 have this or if they're going to concede the
7 documents are a fraud.

8 THE COURT: If it's a hearing to decide
9 validity of documents, and everyone else is going
10 to be participating, including yourself, I don't
11 see why I can't have that hearing.

12 ELIOT BERNSTEIN: Because Ted -- we can have
13 it, but they shouldn't be allowed to -- Ted has
14 conflicting interests in the outcome of this.

15 THE COURT: You know, I can take that into
16 consideration at the hearing.

17 ELIOT BERNSTEIN: Okay. That's fine. I'm
18 good with that.

19 THE COURT: I do all that. That's part of
20 what I'll -- you know, it's not only what's said,
21 but who says it, and what --

22 ELIOT BERNSTEIN: So, yeah, then let's have
23 that hearing to remove Ted.

24 THE COURT: Because here's what I want to do.
25 I want to start giving hearing dates that are --

1 where we can get some orders and move this estate
2 along. Because I think that's important. Okay.
3 So --

4 ELIOT BERNSTEIN: In the last hearing you
5 said you would hear the petition to remove Ted.
6 You ordered it, actually.

7 THE COURT: I wanted that heard a while
8 ago --

9 ELIOT BERNSTEIN: Then we'll hear the
10 document stuff, if he survives?

11 THE COURT: Yeah, but here's the thing, your
12 case got -- I thought I had given a hearing date
13 on that petition to remove and then you amended, I
14 think, isn't that what happened?

15 ELIOT BERNSTEIN: No.

16 MR. ROSE: You denied the petition because it
17 was improperly filed. He just started a complaint
18 in which there are --

19 THE COURT: Don't talk over each other.

20 ELIOT BERNSTEIN: Okay.

21 MR. ROSE: He's just filed a new complaint.
22 We have just filed motions to dismiss. There's
23 other parties that haven't been served. And I
24 think Mr. O'Connell is involved in --

25 ELIOT BERNSTEIN: That's in Sy.

1 MR. ROSE: Mr. O'Connell is involved in --

2 ELIOT BERNSTEIN: That's in Sy, not Shirley.

3 THE COURT: All right. Here's what I'm
4 doing. I'm going to give you your half a day
5 trial date on Count II in this 3698 case. I mean,
6 I'm not going to give it to you now, I'll have my
7 assistant look at my calendar and give you a half
8 a day. Eliot

9 MR. ROSE: That's fine.

10 THE COURT: Eliot, as soon as you're able to
11 serve and do what you can in Shirley --

12 ELIOT BERNSTEIN: I'm ready.

13 THE COURT: -- you get on whatever you file
14 in any of the cases --

15 ELIOT BERNSTEIN: On Sy. Okay. But on
16 Shirley I'm ready to have the petition heard.

17 THE COURT: Is that ready to be heard, the
18 petition in the Shirley case?

19 ELIOT BERNSTEIN: Let's have it heard the
20 same day.

21 MR. ROSE: There's a motion to dismiss
22 directed to that.

23 THE COURT: Well, then get that set for
24 hearing. Okay. I mean, let me start hearing,
25 knocking out the things --

1 ELIOT BERNSTEIN: That's the order you
2 wanted. That's the order you ordered.

3 THE COURT: The hearing date on a motion to
4 dismiss is easier to get than a half-day trial
5 date. So it will work out.

6 ELIOT BERNSTEIN: Okay.

7 THE COURT: Any objection to the PR
8 intervening in this 3698 case, which is Ted versus
9 the children?

10 ELIOT BERNSTEIN: I haven't even read this
11 thing. I just got it. Did you send this out
12 prior to this?

13 MR. O'CONNELL: I believe we did.

14 ELIOT BERNSTEIN: We got a notice for the
15 hearing. We didn't get the document attached with
16 it.

17 THE COURT: You want -- tell you what. You
18 want, like, I'm going to take some other people,
19 you want to look at it?

20 ELIOT BERNSTEIN: Actually, I do, because we
21 don't know what it was.

22 MR. ROSE: Our position, just for the record
23 is --

24 THE COURT: Are you okay with him
25 intervening?

1 MR. ROSE: If I can -- I have discussed the
2 issue with Mr. O'Connell. I'm concerned that, you
3 know, a lot of estate resources not be expended --
4 I discussed with Mr. O'Connell. He's intervening
5 because he wants to protect his right as PR
6 because he needs to know who the beneficiaries
7 are.

8 THE COURT: Okay.

9 MR. ROSE: So if he's not going to be
10 spending a lot of money on the thing to be
11 involved in it, we have no objection on that
12 basis.

13 THE COURT: Okay. Mr. Morrissey, you okay
14 with that?

15 MR. MORRISSEY: The objection -- my objection
16 would have been the same. I haven't spoken with
17 Mr. O'Connell, but to the extent that -- all
18 beneficiaries are going to be presumably arguing
19 in the clause, and so everyone -- every
20 beneficiary's rights are represented. I don't
21 know that we need extra resources.

22 THE COURT: I'm going to let him intervene,
23 subject to Eliot saying no. So talk to him about
24 that.

25 MR. O'CONNELL: Sure.

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 21st day of January, 2015.

DAVID L. MARSAA, COURT REPORTER

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

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PROCEEDINGS BEFORE
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

TIME: 9:27 a.m. to 10:32 a.m.

1 APPEARANCES:

2

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ALSO PRESENT: Eliot Bernstein

25

1 BE IT REMEMBERED, that the following
2 proceedings were taken in the above-styled cause
3 before Honorable JOHN PHILLIPS, at the Palm Beach
4 County Courthouse, 3188 PGA Blvd., Palm Beach
5 Gardens, County of Palm Beach, State of Florida, on
6 Tuesday, the 15th day of September, 2015, to wit:

7

8 THE COURT: We're here on the Simon
9 Bernstein case; is that right?

10 MS. FOGLIETTA: Yes, Judge.

11 THE COURT: This ended up in this division
12 of the Court because of a recusal from somebody
13 else in another division of the Court, right?

14 MR. FEAMAN: That raises an interesting
15 point. Peter Feaman on behalf of William
16 Stansbury, a creditor of the estate. I was
17 late coming in. Mr. O'Connell is late. All
18 the attorneys and the litigants are either in
19 West Palm or south. I respectfully don't
20 understand how we ended up here in the north
21 branch. Should we set it back to the main
22 branch?

23 THE COURT: No. That would be judge
24 shopping. When somebody recuses themselves
25 then it's randomly reassigned. I was verifying

1 this isn't a case that started out with me.
2 It's a case that started out with somebody
3 else.

4 MR. FEAMAN: Judge Colin, actually,
5 specifically said in his recusal order north
6 branch, which I didn't understand.

7 THE COURT: That's what the 4th DCA is
8 for. I'm not here to question some other
9 judge's order. You won't have me saying he was
10 wrong. I'm not the appellate judge. If
11 somebody made a mistake and you all think
12 there's relief that should be granted to
13 correct his mistake that's what the 4th is for.
14 Please have a seat.

15 We're here because somebody else is not
16 the judge in the case anymore and I am, right?

17 MR. FEAMAN: Right.

18 THE COURT: We'll go to the next step.
19 This is a case management conference. What is
20 it that I need to do to manage the case? I
21 received the trustees' status report which is
22 lengthy and comprehensive. I've read that.

23 Other than being brought up to speed by
24 having read that report what else needs to be
25 resolved to get this case done?

1 MR. ROSE: Good morning. I'm Alan Rose.
2 Can I speak from here?

3 THE COURT: You can.

4 MR. ROSE: I'm not planning on doing the
5 whole hearing, but briefly there are,
6 technically, four other cases that all were
7 assigned. I think we've noticed a status
8 conference in all four cases.

9 There are two estates. The Simon
10 Bernstein that Your Honor mentioned, he died in
11 2012.

12 THE COURT: Then there's the wife who
13 pre-deceased him, has a case, and I've been
14 asked to consider -- one of the things that
15 needs to be done is the closing of that estate.

16 MR. ROSE: Correct. She died in 2010.
17 Each of those estates builds into a trust, so
18 there's technically four pieces of pending
19 litigation; an estate of Shirley, a Shirley
20 trust construction, and an estate of Simon and
21 claim in the Simon trusts for the removal of my
22 client. Those are the four separate matters.
23 And then we came before you -- when Judge Colin
24 recused himself there were pending motions
25 counsel thought best to come and get some sort

1 of order.

2 The one thing that we believe, at least
3 which was in the status report which should be
4 addressed fairly early on, is whether we're
5 going to have a guardian ad litem for the three
6 minor children that are represented by Eliot
7 Bernstein, and try to bring some order to this
8 case which I think was a little bit out of
9 control in Judge Colin's courtroom.

10 THE COURT: Is there a motion for
11 appointment of a GAL? Has a motion been filed
12 by someone?

13 MR. ROSE: I think the -- my understanding
14 is the beneficiaries were about to file one. I
15 don't think they filed yet. There is a pending
16 motion to appoint an attorney for the children.
17 It's sort of a similar issue. Maybe
18 Mr. O'Connell can -- it's on one of his lists
19 of motions.

20 And then there's -- I think the main thing
21 we need to discuss is what order we're going to
22 do the hearings in because along with the
23 guardian ad litem it's our position the first
24 thing we should decide, since almost every
25 motion you're going to hear on Mr. O'Connell's

1 list is filed by Eliot Bernstein, is he's not a
2 beneficiary. We have a one-count complaint to
3 determine the validity of the documents. And
4 under the documents, as drafted, he's
5 disinherited. He's not a beneficiary under any
6 way and if you remove his standing then I
7 believe we can go to mediation and resolve
8 almost all of these motions without taking up,
9 probably, two or three weeks of the Court's
10 time.

11 THE COURT: Well, I noticed in the
12 trustee's status report that there was
13 mentioned several times that he's not a
14 beneficiary. So has there been an order that
15 establishes that or is that just the position
16 that's being argued by the --

17 MR. ROSE: Well, the documents themselves,
18 the operative document, for example, Simon
19 Bernstein's will -- the sole beneficiary is the
20 trust. Simon Bernstein's trust the soul
21 beneficiaries are his ten grandchildren.
22 Shirley Bernstein's will, the sole beneficiary
23 is her trust. Shirley Bernstein's trust gave
24 Simon Bernstein the power of appointment to
25 appoint and he appointed to his grandchildren.

1 So what we filed was a one-count complaint to
2 determine those documents. We actually filed a
3 trust construction action. Judge Colin advised
4 us to file -- to add a count. We added one
5 count to determine the validity of those
6 documents. It's been answered by everybody,
7 and what Judge Colin did was he severed that
8 one count from everything else and he stayed
9 everything else until we resolved that one
10 count. That's the issue that we believe, if
11 you resolve that issue first, a lot of the
12 stuff would go away and that was part of the
13 purpose of the status conference. The parties
14 can't, among themselves, agree what issues
15 should be heard first. If you did that issue,
16 either if he has standing or he doesn't, if he
17 doesn't have standing we'll good through
18 hundreds of thousands of dollars of legal fees
19 resolving motions that he filed if he lacked
20 standing.

21 I think if you couple it with a motion for
22 a guardian ad litem there is a motion pending
23 in a fifth case, the Oppenheimer case, that's
24 also before you, not today, for a guardian ad
25 litem. Judge Colin deferred on that. I

1 believe Mr. Morrissey's clients are going to
2 move for a guardian ad litem. I believe Mr.
3 Eliot Bernstein, in his papers, has indicated
4 that he has a conflict with his children and
5 they should have a lawyer and a guardian
6 representing them. He can speak for himself to
7 that point.

8 Those are the two issues we think should
9 go first. If it happens first this case would
10 become much more manageable and can even be
11 resolved because, as we indicated in our
12 report, these are relatively small estates.

13 There was a belief that's driving this
14 that there was \$100 million left behind but
15 they left behind modest estates. Over time
16 we've been trying to sell property and trying
17 to narrow things and all we've been doing is
18 spending attorneys' fees between a curator --

19 THE COURT: I just want to figure out
20 what's on the judicial plate that needs to be
21 addressed.

22 MR. ROSE: That's what we think should
23 happen first, those two issues, and everything
24 else will fall into place.

25 THE COURT: What is the name or where is

1 the document to be found that has this single
2 count for determination of validity of estate
3 documents or trust documents that was severed
4 out by Judge Colin?

5 MR. ROSE: It's in case 5020143698 --

6 THE COURT: What are the two letters in
7 between the 14 and the 36 --

8 MR. ROSE: I'm sorry, CP003698XXX and now
9 --

10 THE COURT: I don't need that stuff.
11 What's the docket entry number?

12 MS. FOGLIETTA: The filing number?

13 THE COURT: I want to know where to find
14 this thing that seems to be one of the first
15 things --

16 MS. FOGLIETTA: Are you talking about the
17 amended complaint? I have a copy.

18 MR. ROSE: Just the docket entry, if you
19 don't mind.

20 THE COURT: I have a computer here so
21 don't think I'm being rude if I look away from
22 you all.

23 MR. ROSE: It was filed October 3, 2013.

24 MS. FOGLIETTA: I have a copy.

25 MR. ELIOT BERNSTEIN: Can I make an

1 objection?

2 THE COURT: Who are you?

3 MR. ELIOT BERNSTEIN: I'm Eliot Bernstein.

4 THE COURT: You can't object yet.

5 MR. ELIOT BERNSTEIN: Can I make a
6 statement?

7 THE COURT: Not yet. I'm looking at this
8 computer screen trying to find the docket.
9 Everybody, please be seated. You're making me
10 nervous.

11 I'm just scrolling through the attorneys.
12 I haven't even gotten to the pleadings yet.
13 I'm looking for a pleading or an order entered
14 October 3rd.

15 MR. ROSE: An amended complaint.

16 THE COURT: I have an amended complaint by
17 Ted Bernstein.

18 MR. ROSE: Yes.

19 THE COURT: And in that amended complaint
20 is the count that was referred to. It's Count
21 II?

22 MR. ROSE: I believe it is, Sir.

23 THE COURT: All right.

24 MR. ROSE: Page 13 is the actual -- the
25 count itself incorporates the allegations and

1 the documents.

2 THE COURT: All right. Count II starts at
3 Paragraph 79 of the document?

4 MR. ROSE: Yes, sir.

5 THE COURT: All right. And then at some
6 point in time you say Judge Colin severed out
7 this count and said it should be heard
8 separately. Is that --

9 MR. ROSE: He severed it and stayed --

10 THE COURT: Do you know when the order was
11 entered on that?

12 MR. ROSE: 10-6 according to the chart
13 from --

14 THE COURT: 10-6-14?

15 MR. ROSE: Yes. It says order on
16 amendments to pleadings. There might be an
17 order that predates that.

18 MS. FOGLIETTA: I do have a copy of it.

19 THE COURT: The other is almost the very
20 next docket entry. The amended petition is
21 Docket Entry 26. The order is Docket Entry 27.

22 MR. ROSE: Specifically Paragraph 3 on
23 Page 2.

24 THE COURT: There was a response filed by
25 Mr. Bernstein and the other defendants. Are

1 those things that happened?

2 MR. ELIOT BERNSTEIN: What case? Is this
3 Shirley Bernstein --

4 THE COURT: Case Number 14CP3698.

5 MR. ROSE: Everyone has either answered or
6 been defaulted and I noticed the case for
7 trial.

8 MR. ELIOT BERNSTEIN: Are we here for
9 Simon Bernstein? I'm confused. I'm not
10 prepared for Shirley Bernstein's case today.
11 Can I raise another point, Your Honor?

12 THE COURT: I only do one thing at a time.
13 You must stop.

14 MR. ELIOT BERNSTEIN: What?

15 THE COURT: You must stop. I do one thing
16 at a time. You're not that thing yet.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: This is a case management
19 conference. I'm not deciding anything. I do
20 decide that I'm the one that runs this
21 courtroom so I don't have people jumping up and
22 blurting things out. That doesn't help me
23 orderly go through figuring out what the
24 problem is and how to attack and resolve the
25 problem. My specialty is wrestling stuff to

1 the ground and resolving it. That's what I'm
2 going to do in this case and that's what I do
3 in every case. This is a bigger one to wrestle
4 to the ground than some other ones but there's
5 no octopus case that I've ever met that I
6 haven't been able to figure out sooner or
7 later. The only way I can do that is talk to
8 one person at a time. We'll figure out one
9 thing at a time. I'm not a smart guy but I'm
10 persistent. All these guys know me. I'm
11 looking you in the eye because you haven't met
12 me before, right? Sir, yes, you haven't met
13 me?

14 MR. ELIOT BERNSTEIN: Yes, sir.

15 THE COURT: Okay. So you don't know me.
16 These other attorneys do because they're in
17 court in front of me on other cases where I've
18 done the same thing. I'm too stupid to --
19 well, I'm stupid. I take one thing at a time
20 and I make sure I know what I'm doing and I go
21 to the next thing. I try to be courteous to
22 everybody. I try to make sure everybody is
23 heard. I demand that people be courteous to me
24 in return. I don't take any crap. In that
25 method of proceeding we get through whatever is

1 uncomfortable, whatever is messed up, whatever
2 is complex. We simplify it down enough for me
3 to understand it and then we resolve it.

4 That's what is going to happen in this case.

5 MR. ELIOT BERNSTEIN: So my question is --

6 THE COURT: I told you I'm not talking to
7 you yet. I was talking to you to tell you what
8 I'm doing so you're not mystified, but now you
9 sit silently until it's my time to talk to you.
10 Right now I'm talking to some other people.

11 Okay, so --

12 MR. ROSE: May I approach --

13 THE COURT: -- the trustees believe the
14 first thing that needs to be done is the
15 resolution of this order that was entered by
16 Judge Colin severing out the count and the
17 amended complaint that deals with the validity
18 of the testamentary documents, correct?

19 MR. ROSE: Yes, sir.

20 THE COURT: All right. Does anybody
21 object to that issue being resolved first in
22 the order of events in this sequence of cases?

23 MR. O'CONNELL: Are you ready for me?

24 THE COURT: Yeah, I just want to know if
25 there's any objection to having that issue

1 heard and resolved first. That's the issue
2 that I'm chewing on right now.

3 MR. O'CONNELL: Okay. I wouldn't call it
4 an objection, but I'd like to be able to
5 explain my role in it and these other motions.

6 THE COURT: Well, first I want to know if
7 there's any reason I should attack this as the
8 first order of business in setting a trial or
9 hearing to have it resolved. Do you have any
10 objection?

11 MR. O'CONNELL: I wouldn't object to that.

12 THE COURT: All right. Does anybody else
13 seated at the tables have any objection?

14 MR. FEAMAN: May it please the Court.
15 Peter Feaman on behalf of William Stansbury.
16 He's a \$2.5 million creditor of the estate of
17 Simon Bernstein.

18 We're here in the estate of Simon
19 Bernstein and it's the position of
20 Mr. Stansbury that a removal of Ted Bernstein
21 as successor trustee should be heard first.

22 THE COURT: Okay. Why?

23 MR. FEAMAN: The reason for that is if
24 that issue is determined one way or the other
25 we believe that is the linchpin to then

1 resolving probably all the other issues in this
2 case.

3 THE COURT: The trustee believes the issue
4 to resolving many of the issues is to determine
5 whether Eliot -- I'm using first names, I'm
6 sorry. Is it Mr. Bernstein, Eliot Bernstein?

7 MR. ELIOT BERNSTEIN: You can call me
8 Eliot.

9 THE COURT: Okay. I don't mean to be
10 disrespectful. I don't want to do that.

11 The trustee's thought is that resolving
12 whether Eliot has any standing to be involved
13 in the litigation is key. You're saying that's
14 not key, it's something else that's key? What
15 else is it that you're suggesting is the key
16 issue to be resolved?

17 MR. FEAMAN: Because that's the Shirley
18 Bernstein trust. The matter that is before
19 Your Honor today is the estate of Simon
20 Bernstein, and Simon Bernstein had a separate
21 trust which was different from the Shirley
22 Bernstein trust and the -- most of the assets
23 are in the Simon Bernstein trust which then had
24 the pour-over will into -- most of the assets
25 are in the Simon Bernstein estate and then had

1 the pour-over will into the trust and that's --
2 that's the matter that is the most significant,
3 in my humble opinion, that is before Your Honor
4 is the Simon Bernstein estate and the Simon
5 Bernstein trust. It's the opinion of
6 Mr. Stansbury that Mr. Ted Bernstein, as a
7 successor trustee to the Simon Bernstein trust,
8 should be heard first.

9 THE COURT: Let me ask this: How is it
10 that there is an order by Judge Colin severing
11 out this count about the validity of some
12 estate documents in the Simon Bernstein case if
13 the documents in question were filed in a
14 different estate? Maybe the trustee can
15 address that.

16 MR. ROSE: Sure.

17 THE COURT: What's up with that?

18 MR. ROSE: We have a trust construction
19 count that was to determine the validity and
20 then the construction of the Shirley Bernstein
21 trust. Within that claim, because there's an
22 overlap of issues there, the standing issue is
23 the same in both. What Judge Colin ordered me
24 to do was to file an additional count into that
25 complaint. Everyone was properly noticed. We

1 already had the jurisdiction over all the
2 beneficiaries, those that answered, those that
3 did not. Nobody moved to dismiss upon the
4 ground that it's not properly in one case, and
5 so because there's a direct overlap between
6 documents that were executed and the validity
7 of those documents, and the validity of the
8 will of Simon directly relates to the validity
9 of the exercise of power of appointment because
10 he exercised his power through his will. So
11 what Judge Colin did was he ordered me to file
12 a simple one-count complaint, as simple as it
13 could be, list the four documents and allege
14 that they're all valid and enforceable. In the
15 context of trying that issue you will decide
16 whether, for example, Simon Bernstein was
17 unduly influenced, if that's an allegation, to
18 execute the power of appointment. The power of
19 appointment is what deprives Mr. Eliot
20 Bernstein of standing. Judge Colin ordered us
21 all put it all in this count. He then stayed
22 everything else and severed that and we're
23 supposed to try that and we get bogged down
24 constantly in --

25 THE COURT: Don't get sidetracked or I'll

1 get confused and disaster happens.

2 Mr. Bernstein, Eliot Bernstein, you've got
3 an objection to the trial of the issue about
4 the validity of the estate documents that's
5 just been discussed?

6 MR. ELIOT BERNSTEIN: Yes, sir.

7 THE COURT: What's your objection?

8 MR. ELIOT BERNSTEIN: Several, with that
9 being the first thing. The first part is that
10 Mr. O'Connell has filed with the court in the
11 Simon Bernstein estate nothing to be done with
12 Ted Bernstein as trustee because Mr. O'Connell
13 and Mr. Feaman, two prominent lawyers that you
14 know, have claimed that the document itself
15 that they're operating under precludes Ted
16 Bernstein from being a trustee. The language
17 says he can't be a related party --

18 THE COURT: You got to get back to my
19 question.

20 MR. ELIOT BERNSTEIN: Here's the problem
21 --

22 THE COURT: No. I'm the one that's
23 telling you the question I'd like you to
24 answer. Remember I told you I chew on one tiny
25 thing at a time. I don't want to get confused.

1 I might make a mistake if I get confused.

2 This is the thing I'm trying to establish
3 in my mind now: What is your objection to
4 trying the issue about the validity of the
5 estate documents that are found in Count II of
6 the amended petition, Docket Entry Number 26?

7 MR. ELIOT BERNSTEIN: My problem is is
8 that if Ted is not a trustee properly serving,
9 and a fraudulent trustee as they're claiming
10 and he's acting improperly, to have a hearing
11 where Ted's arguing validity where he's
12 conflicted, I mean if he doesn't argue
13 successfully, his entire family and children
14 are cut out of everything. So he's got a
15 conflict in arguing a construction --

16 THE COURT: You're not even addressing my
17 question. Thank you. Please be seated.

18 MR. ELIOT BERNSTEIN: I did answer your
19 question because how can we have -- how can we
20 hear his --

21 THE COURT: You're asking me a question.
22 Your question started with how do we do
23 something. I don't know.

24 MR. ELIOT BERNSTEIN: I'm saying we can't
25 hear --

1 THE COURT: Stop. Please be seated. You
2 failed to answer my question. You got
3 something else on your mind that doesn't
4 address what I'm trying to figure out.

5 Is it true that Judge Colin issued a stay
6 order on the other parts of the litigation and
7 it intended -- somehow he manifested an
8 intention to resolve the validity of the estate
9 documents? Is there an order that says that
10 somewhere?

11 MR. ROSE: I think that goes too far.
12 There are multiple proceedings. He severed
13 this count --

14 THE COURT: I got that.

15 MR. ROSE: It's our view that that should
16 be what is decided --

17 THE COURT: I know. But you said a minute
18 ago that he stayed other proceedings. Is there
19 an order that says that? Where do I find that
20 order?

21 MR. ROSE: It's the one that you looked
22 at, October 6th. It stays the rest of the
23 proceedings inside the Shirley Bernstein trust
24 construction case. It doesn't stay everything
25 in the Simon Bernstein side.

1 THE COURT: Okay.

2 MR. ROSE: That's what I was clarifying.

3 THE COURT: Okay. You've been living with
4 these cases for several years.

5 MR. ROSE: Yes.

6 THE COURT: I've been living with them for
7 30 minutes so I'm not as intimately familiar
8 with the ins and outs of what's going on here.
9 I'm not even familiar with everybody's names,
10 so I apologize to you for that.

11 Well, then there's no reason for me not to
12 set a trial on that Count II of the amended
13 complaint, right? I'll do that whether
14 everybody wants me to do or not that way I'll
15 get something done and that way we'll move down
16 the road. That will be done. Court to order
17 set. How much time you think we need to try
18 that?

19 MR. ROSE: Normally I would think we can
20 try the case within a day.

21 THE COURT: Okay. Anybody think we need a
22 different amount of time?

23 MR. ELIOT BERNSTEIN: Yeah. I think it
24 will take several days.

25 THE COURT: Why?

1 MR. ELIOT BERNSTEIN: Well, you're going
2 to have to first start with is Ted Bernstein a
3 valid trustee to argue the case. So that's --

4 THE COURT: No, I won't have to decide
5 that.

6 MR. ELIOT BERNSTEIN: You want somebody to
7 argue who's not valid --

8 THE COURT: What else? Any other issue?
9 Is there any other issue that's going to take
10 more than a day?

11 MR. ELIOT BERNSTEIN: Well, it's very
12 complicated.

13 THE COURT: No, this isn't going to be
14 complicated.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: It's not. There's documents,
17 pieces of paper that somebody claims were
18 executed or not executed.

19 MR. ELIOT BERNSTEIN: There's been fraud
20 in the document.

21 THE COURT: I was explaining to you
22 something. If you interrupt me you can be held
23 in contempt. If I interrupt you I'm keeping
24 order in my courtroom. You see the difference
25 there? This is not a conversation. Okay. No

1 need for me to explain anything further. I
2 intend to set this for trial. I intend to set
3 it for a day. I intend that issue of the
4 validity of the estate documents will be
5 resolved in that trial. Is there any reason to
6 not think I can do that in a day other than
7 what Mr. Eliot Bernstein has mentioned?

8 MR. FEAMAN: On behalf of Mr. Stansbury we
9 have no involvement in the Shirley Bernstein
10 estate.

11 THE COURT: So you don't care what I do.

12 MR. ROSE: Mr. O'Connell is a party, he's
13 intervening because of the overlap of the power
14 of appointment. I can't speak for him but I
15 want to make sure he agrees that a day is
16 enough. We are all bad estimators.

17 THE COURT: I asked this question to the
18 entire courtroom. If anybody thinks
19 differently then what I'm getting ready to do
20 you're supposed to say something. He hasn't
21 said anything.

22 MR. MORRISSEY: Judge, John Morrissey. I
23 represent four of the adult grandchildren who
24 will ultimately be beneficiaries under the
25 trust document.

1 THE COURT: Okay.

2 MR. MORRISSEY: So certainly my clients
3 have an interest here in what's going on. I
4 just want to let Your Honor know, because I
5 don't think -- I hope Mr. Feaman is not
6 misleading the Court. On two occasions so far
7 he said that he represents a creditor of the
8 estate, that's incorrect.

9 THE COURT: William Stansbury.

10 MR. MORRISSEY: Correct. William
11 Stansbury is not a creditor of the estate.
12 He's someone who filed a claim in the estate.
13 An objection was filed by the personal
14 representative, or counsel for the personal
15 representative, which means that Mr. Stansbury
16 had 30 days to run off and file his lawsuit
17 which he's done. He's not done anything with
18 that separate civil litigation. It's not been
19 reduced to a judgment. He is not a creditor,
20 therefore, Judge, he does not have standing not
21 only with respect to the validity of the
22 documents but with respect to anything else in
23 these various litigations.

24 THE COURT: That's not helping me figure
25 out how much time I need to set aside for this

1 trial.

2 MR. MORRISSEY: I'm sorry.

3 THE COURT: When I'm telling you I'm a
4 simple guy I'm not being modest. I'm just
5 being truthful. That's where I'm at. I'm
6 going to write down what I do next when I leave
7 this room. What I do next when I leave this
8 room is tell my judicial assistant to reserve a
9 day, set this trial date, send you notices.
10 Bang. That thing is done. So that's why I
11 want to stick with this. Do you have any
12 objection to that?

13 MR. MORRISSEY: No.

14 THE COURT: Okay. Great. This is the way
15 I intend to proceed -- I love Marty Colin.
16 This guy is a judge that's been around a long
17 time. I know him. He's an entirely different
18 guy than me. I expect that your experience
19 with Judge Colin has been different than
20 sitting here with me. Am I right? I never
21 appeared in front of him as a judge -- I never
22 appeared in front of him while he's a judge and
23 while I was a lawyer. He appeared in front of
24 me while he was a lawyer and I was a judge. I
25 don't know how he is as a judge but I am pretty

1 sure he's a different guy than me. Nice guy.
2 I like him. But we're different judges. Your
3 experiences with Judge Colin, put them aside.
4 You're having an experience with me now. We
5 have to do it the way I do it or else I'll mess
6 up.

7 The second thing I have on my list of
8 things to ask you about that I've been jotting
9 down here is this request for guardian ad
10 litem. I think I remember asking and being
11 told that no one has filed a formal request for
12 appointment of a guardian ad litem; is that
13 correct?

14 MR. O'CONNELL: Correct.

15 MR. ROSE: In these four cases no one has
16 done that yet.

17 THE COURT: Okay. Am I going to?

18 MR. ELIOT BERNSTEIN: I believe they have,
19 actually.

20 THE COURT: When was it filed? What
21 docket entry?

22 MR. ELIOT BERNSTEIN: I don't know. It
23 was denied a long time ago by Tescher and
24 Spallina, the guys that were removed for fraud
25 in the court. They tried to put guardians on

1 --

2 THE COURT: No, no, no. You see I don't
3 want all the other baggage. I just want the
4 answer to that question. When was it filed?

5 MR. ELIOT BERNSTEIN: I don't know. At
6 the beginning.

7 THE COURT: At the beginning. That takes
8 me to the bottom. That slows down progress on
9 our case management conference. I will go
10 through it. What was the title of the
11 pleading?

12 MR. ELIOT BERNSTEIN: I don't know. I
13 don't think Joy's records went back that far.

14 MS. FOGLIETTA: We pulled things that were
15 pending, Judge. I don't have that.

16 MR. MORRISSEY: On behalf of the four
17 adult grandchildren it's our intention to file
18 one. We were hoping to file one before today's
19 hearing.

20 THE COURT: Okay. Since that hasn't been
21 filed then I'm not taking action on it. That's
22 my practice. If there's something filed I'll
23 move towards getting it resolved. If it's not
24 been filed and it's just in somebody's mind I
25 find that it's difficult to take any action.

1 I'm crossing that off my list.

2 There's a pending motion to appoint
3 attorneys -- an attorney for the children. Is
4 that an attorney ad litem?

5 MR. ELIOT BERNSTEIN: An attorney for my
6 children.

7 THE COURT: Who filed that motion?

8 MR. ELIOT BERNSTEIN: Me.

9 THE COURT: When did you file?

10 MR. ELIOT BERNSTEIN: Just to pay the fees
11 for counsel for my children.

12 THE COURT: When did you file it is what
13 I'm trying to figure it out.

14 MR. ELIOT BERNSTEIN: A while ago.

15 THE COURT: Any closer estimate than that?

16 MR. ELIOT BERNSTEIN: I've been filing
17 that since the first petition in this case in
18 May of 2013 which still isn't heard.

19 THE COURT: May of 2013 is when you filed
20 it?

21 MR. ELIOT BERNSTEIN: Yeah.

22 MR. O'CONNELL: We think we found one
23 August 28, 2014 in the Simon Bernstein estate.

24 THE COURT: The Simon Bernstein estate is
25 the only one I got up on the computer. The

1 only thing that happened on August 20th is an
2 order by Judge Colin maybe.

3 MR. O'CONNELL: 28th, sorry, Your Honor,
4 2-8.

5 THE COURT: Okay. I just got my trifocals
6 reissued. These are the old ones so an 8 and a
7 0 look alike. I'm moving my head and trying to
8 focus. Bear with me a second.

9 I don't see anything anywhere near the
10 28th of August of '14. Is that the year, '14?

11 MR. O'CONNELL: Yes. It says, "Motion to
12 compel estates of Simon and Shirley to pay
13 counsel for Eliot and his minor children."

14 MS. FOGLIETTA: That's in case number --

15 THE COURT: Well, I don't see any motion
16 with that description. Perhaps the Court
17 doesn't have it scanned in or something. Who
18 knows. Anybody have a paper copy of it that I
19 can look at?

20 MS. FOGLIETTA: I do.

21 THE COURT: I wouldn't mind looking at a
22 paper copy if you got one handy.

23 MR. O'CONNELL: Sure.

24 THE COURT: And was there a ruling on this
25 motion for having the estate pay for attorneys

1 for Eliot and his minor children? Has there
2 been an order on this?

3 MR. O'CONNELL: Not that I'm aware of,
4 Your Honor.

5 THE COURT: Was there ever a hearing?

6 MR. ROSE: I don't believe it was set for
7 hearing. That was alluded to that
8 Mr. Bernstein had requested an attorney for his
9 children and I would suggest that -- subject
10 to -- I don't think there was an objection from
11 anyone -- it's not appropriate to appoint an
12 attorney for his children. If you appoint a
13 guardian ad litem to represent his children
14 then the guardian ad litem has the power to go
15 out and retain counsel and to accomplish the
16 relief that's sought. We don't believe it's
17 appropriate though for Mr. Bernstein himself,
18 but certainly his children who are
19 beneficiaries should have --

20 THE COURT: All right. It looks like this
21 motion just asks for money. It's not asking
22 for the appointment of counsel. Mr. Eliot is
23 seeking the issuance of money from the trust
24 for the estate. He alludes to the children
25 needing an attorney but he doesn't ask for one

1 to be appointed. He asks if he can be given
2 money.

3 There's an order I see, Docket Entry 24,
4 where Judge Colin prohibits any new filings.
5 I've not read the order yet but I see the title
6 of the order takes up 20 lines of docket entry
7 here in our computer program. I hope the order
8 is shorter than the title.

9 MR. O'CONNELL: We got it for Your Honor.

10 (Handing)

11 THE COURT: Now are these copies ones I
12 should return to you all or can I keep these?

13 MS. FOGLIETTA: You can keep them.

14 THE COURT: Thanks. Judge Colin had a
15 case management conference. It's a case
16 management order. How about that. It's a
17 great order. He must have been having problems
18 with the progress of this case to issue an
19 order like that. That was at Docket Entry
20 Number 24 which leads me to ask this question,
21 perhaps foolishly, and that's the question if
22 this order was entered by Judge Colin in
23 September of 2014 at Docket Entry Number 24 how
24 come we're up to 82 docket entries and other
25 petitions and things and stuff being filed?

1 Did he disregard the order, because I think
2 it's a great order, or did something else
3 happen that I don't know about that changed the
4 order, or did he retract the order?

5 MR. O'CONNELL: Let me try to help there.
6 Just so you can get my position in all this, I
7 want to explain. I am a successor personal
8 representative in the Simon Bernstein estate,
9 so that's my universe in terms of this matter.
10 I got over a year at this point that I've been
11 involved in that capacity. With regard to that
12 particular order the way everyone has
13 interpreted it is it has to do with anyone to
14 institute new litigation, a new adversary
15 matter they would have to go before Judge
16 Colin, because we certainly have filed, on an
17 administrative level, a number of motions of
18 things that needed to happen.

19 THE COURT: Administrative stuff is
20 allowed to happen.

21 MR. O'CONNELL: To go to your good
22 question, well, why are there so many items,
23 not that we filed a ton of motions and
24 petitions but certainly, on my behalf, there
25 are definitely some that we have filed.

1 THE COURT: Docket Entry Number 41 there
2 is a petition to remove Theodore Stuart
3 Bernstein as alleged successor trustee filed by
4 Eliot Bernstein. How did that get filed? Did
5 Judge Colin approved that?

6 MR. ELIOT BERNSTEIN: He directed that.

7 THE COURT: Say that again?

8 MR. ELIOT BERNSTEIN: He directed that.

9 THE COURT: So there was a hearing that he
10 authorized this petition to be filed?

11 MR. ELIOT BERNSTEIN: Yes. And then a new
12 case was started. He ordered a new case to
13 remove Ted and we're in the middle of that.
14 That's one of the cases.

15 Just to clarify something, I'm still
16 confused, the first part about the hearing
17 you're ordering, that's not --

18 THE COURT: We're not on that subject.

19 MR. ELIOT BERNSTEIN: Are we on Simon's
20 case or Shirley's case? I'm confused by that.

21 THE COURT: I'm confused too. Welcome to
22 my world.

23 MR. ELIOT BERNSTEIN: Welcome to mine.

24 THE COURT: We're going to eliminate some
25 of the confusion by trying some of these things

1 pled in this case and one of them that's been
2 pled is Count II of the amended petition of
3 Docket Entry 26 that Judge Colin severed out
4 and said is going to be tried separately.

5 MR. ELIOT BERNSTEIN: That's in Shirley.

6 THE COURT: I'm telling you what I'm
7 doing. You asked me what I'm doing, to clarify
8 what I'm doing. I just told you.

9 MR. ELIOT BERNSTEIN: Okay.

10 MR. ROSE: If I can, just briefly with
11 that, what Judge Colin was doing is you can fax
12 him the motion or bring it to his attention --

13 THE COURT: He uses fax? Okay. He is a
14 dinosaur.

15 MR. ROSE: He would give permission that
16 something could be filed or not filed. We had
17 to go through the extra step of sending him in
18 advance, or asking permission if I wanted to
19 file a motion to approve a sale or whatever we
20 had to get his permission in advance.

21 THE COURT: Okay. Thank you. I find
22 there's no pending motion for appointment of
23 attorneys for the children so I'm striking that
24 off my list.

25 Now back to the William Stansbury claim

1 regarding the estate of Simon Bernstein. What
2 is the pleading that sets up any claim that
3 needs to be adjudicated in that case that was
4 not already set? It's the one thing that
5 you're not involved in. What about the claim
6 you said that William Stansbury has?

7 MR. FEAMAN: That's a separate action that
8 was filed and is pending before Judge Blanc in
9 the general jurisdiction division.

10 THE COURT: Okay. So Blanc will figure
11 that one out, right?

12 MR. FEAMAN: And the estate is a
13 defendant.

14 THE COURT: I'm trying to figure out what
15 I have to set. Blanc has that one, right?

16 MR. FEAMAN: Yes, yes, Your Honor.

17 The only thing, with regard to
18 Mr. Stansbury, I believe, is Mr. Stansbury has
19 filed a motion to discharge him from
20 responsibility for funding the estate's
21 participation in some Chicago litigation, and
22 that should be borne by the estate, but that's
23 already set before Your Honor on October 20th
24 in the special set hearing.

25 THE COURT: When was that set? When did

1 the document hit the court records when --
2 setting that hearing?

3 MR. FEAMAN: I'd say ten days ago. It was
4 set for the day after tomorrow and it had to be
5 reset at my request due to a conflict, and then
6 it was set October 20, 2015 pursuant to a
7 notice of hearing I believe our office sent
8 out, I believe, ten days ago, approximately.

9 THE COURT: That would be in case number
10 what?

11 MR. FEAMAN: That would be case Number
12 124391CP -- 12 -- 2012CP4391.

13 THE COURT: Okay. So that's a different
14 case than I have on the computer screen. Let
15 me get that one up.

16 MR. FEAMAN: That's the case number that
17 actually brings us here today pursuant to
18 notice of hearing filed by Mr. O'Connell, the
19 personal representative of the estate.

20 THE COURT: Just a second. I've been
21 looking at, apparently, the trust case,
22 14CP3698.

23 MS. FOGLIETTA: Judge, that's the Shirley
24 trust.

25 THE COURT: Did you ever see Colin use a

1 computer in court?

2 MR. O'CONNELL: Not really.

3 THE COURT: That's why I call him a
4 dinosaur. I'd say it to his face trying to get
5 him to be more tech savvy.

6 I'm scrolling, okay. You see me scrolling
7 with my finger. I've scrolled through all the
8 attorneys. This is more like it. We're up to
9 386, and roughly ten days ago there was some
10 sort of hearing set. A re-notice of hearing.

11 MR. ELIOT BERNSTEIN: That was an
12 objection to an accounting that I filed timely.

13 THE COURT: The notice of hearing,
14 Mr. Feaman, that you scheduled, or you sent out
15 that I'm referring to is called the fifth
16 re-notice of hearing and it sets hearing on the
17 motion of creditor William Stansbury for a
18 hearing on October 20.

19 MR. FEAMAN: Yes, Your Honor.

20 THE COURT: You set aside a 15-minute
21 period of time for that. Judge Blanc has got
22 the litigation that you referred to in his
23 court and he'll figure that out.

24 MR. FEAMAN: Correct.

25 THE COURT: All right.

1 MR. FEAMAN: But there's also, with
2 regard, if I may, Your Honor, to
3 Mr. Stansbury's claim, Mr. O'Connell has also
4 filed a motion to enter and approve a
5 settlement agreement between the estate and
6 Mr. Stansbury which is still out there. But
7 related to that is a motion by Mr. O'Connell
8 filed on 7-20-2015 to have Simon Bernstein
9 declared the beneficiary of the JP Morgan IRA
10 account, and the reason it relates to
11 Mr. Stansbury is because the settlement money
12 contemplated to be paid to Mr. Stansbury would
13 come out of that account and there's a question
14 whether that is actually money that should be
15 part of the estate or not so before we actually
16 wanted to fund the settlement we wanted to -- I
17 don't mean to speak for Mr. O'Connell -- we
18 wanted to make sure that that would be
19 appropriate source of funds to fund the
20 settlement so there would be no clawback claims
21 either against Mr. Stansbury or the estate
22 subsequent to the consummation of the
23 settlement.

24 THE COURT: Is that petition at issue?

25 MR. FEAMAN: It -- Mr. O'Connell?

1 MR. O'CONNELL: I don't think it was filed
2 as an adversary matter. It's a free-standing
3 petition.

4 THE COURT: Okay.

5 MR. O'CONNELL: Everybody has been served
6 with it.

7 MR. ROSE: For the record we have no
8 objection to that motion being granted. I
9 don't know if anybody objects to the motion.
10 That's certainly something that should be heard
11 if it's objected to very early.

12 THE COURT: Unless somebody notices it up
13 for hearing, get ready for that.

14 We've used up all the time I set aside for
15 the Bernstein case. It would sure be nice to
16 spend the rest of my career talking to you
17 about this but I have other people scheduled at
18 10:30 and I must see them now. Thanks a lot.
19 I'll do my work on setting the trial on the one
20 thing we got and we'll see what happens next.

21 MR. O'CONNELL: Thank you.

22 THE COURT: It was fun and look forward to
23 a long list of hearings as well.

24 (Whereupon, the hearing is concluded at 10:32 a.m.)

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CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 42, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable JOHN PHILLIPS, on September 15, 2015.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction of the reporter.

Dated this 12th day of October, 2015.

Julie Andolpho, FPR

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